

# The Urgenda climate case and its consequences

Roger H.J. Cox

**Presentation for**  
**Adapting Canadian Work & Workplaces**  
**and Work in a Warming World**



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# REVOLUTION JUSTIFIED

why only the law can save us now

**!** WARNING

You do not have the right to  
remain silent after reading.

Forewords by **William McDonough** co-author of the bestseller *Cradle to Cradle - Remaking the way We Make Things* and **Hubbo Dckels** first Dutch astronaut on the 1985 US Space Shuttle Challenger and **James Hansen** "The world's pre-eminent climate scientist" (*Guardian*)

translation by Elizabeth H.D. Merton

# Presentation

1. Relevant aspects of climate science
2. Legal argumentation
3. Engagement of civil society and relevance for stakeholders (unions)
4. Relevance of the Urgenda case for other jurisdictions

# The legal status of IPCC reports

- Reports are subject to dual review, includes all science and mirrors the legal principle of due process and fair hearing
- **“No court of law could possibly deviate from IPCC findings since any expertise put before the court would never be as inclusive as that inherent in the IPCC.”**

# Climate science

## **For certain**

- that Earth is warming since the industrial revolution
- that CO<sub>2</sub> has increased due to mankind

## **95% certainty**

- that man made CO<sub>2</sub> is the cause of the warming

## **90% certainty**

- that all regions will be adversely affected with a rise of  $> 2^{\circ}\text{C}$
- that current warming is 0.8 degrees Celsius

## Inertia of climate system and society

- Emissions till 1980 → current warming effect
- Emissions 1980 till today → unavoidable extra warming
- Emissions till end of transformation → unavoidable warming

## Article 2 UNFCCC 1992

- Defines the ultimate objective of the UN Climate Treaty:

“The ultimate objective of this Convention....is to achieve....stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.”

- But what warming is dangerous?



## Cancun Agreements 2010

“...deep cuts in global greenhouse gas emissions are required according to science, and as documented in the Fourth Assessment Report of the Intergovernmental Panel on Climate Change, so as to hold the increase in global temperature below 2°C above pre-industrial levels, and that Parties should take urgent action to meet this long-term goal...”



# 2°C = Dangerous climate change

## Dangerous extent of

- Sea level rise
- Loss of biodiversity
- Degredation of ecosystems
- Extreme weather events
- Loss of food and fresh water supplies

## Danger of tipping points

## On our way to 3-5°C

- World bank, IEA, IPCC, PWC: we are heading towards 3-5°C
- IMF managing director Christine Lagarde (WEF Davos):

“ Unless we take action on climate change, future generations will be roasted, toasted, fried and grilled.”

# What action is needed to avoid 2°C?

The EU Commission to the EU Council (10.1.2007)

“The EU's objective is to limit global average temperature increase to less than 2°C compared to pre-industrial levels...

By stabilising long-term concentrations at around 450 ppm CO<sub>2</sub> eq. there is a 50 % chance of doing so.”

# What action is needed to avoid 2°C?

Netherlands Environmental Assessment Agency (2010)

“Emission reduction targets of 25 to 40% below 1990 levels in 2020 would be consistent with stabilising long-term levels of greenhouse gas concentration levels at 450 ppm Co<sub>2</sub> equivalent.

This concentration level has a reasonable chance (50%) of avoiding an increase in global average temperature of more than 2°C.”

# What action is needed to avoid 2°C?

Statement of annex 1 developed nations in Cancun (2010)

“...achieving the lowest levels assessed by the Intergovernmental Panel on Climate Change to date [450 ppm Co<sub>2</sub> equivalent] and its corresponding potential damage limitation would require Annex I Parties as a group to reduce emissions in a range of 25 - 40 per cent below 1990 levels by 2020.”

# How much time before we reach 450 ppm?

IPCC 2014

“Baseline scenario’s (scenario’s without explicit additional efforts to constrain emissions) exceed 450 parts per million (ppm) CO<sub>2</sub>-eq by 2030 .”

# International Energy Agency

## Years up to 2020 are key

“To keep open a realistic chance of meeting the 2°C target, intensive action is required before 2020.”

## Delay is also false economy

“delaying action is a false economy: for every \$1 of investment avoided in the power sector before 2020 an additional \$ 4.3 would need to be spent between 2021 and 2035 to compensate for the increased emissions.”







*“climate change represents an urgent and potentially irreversible threat to human societies ....*

*...climate change related impacts have a range of implications, both direct and indirect, for the effective enjoyment of human rights, inter alia the right to life.”*



*emissions of greenhouse gases are amongst the main causes of climate change...*

*It should be noted that climate policy is also designed to protect the health and life of humans..."*

PreussenElektra case (Case C-379/98) of the CJEU



“A reduction in domestic emissions would slow the pace of global emissions increases, no matter what happens elsewhere.”

Massachusetts v. EPA 549 US 497 (2007) case.

# UNFCCC and individual responsibility

## Article 4.2.a

“Each of these [developed country] Parties shall adopt national policies and take corresponding measures on the mitigation of climate change, by limiting its anthropogenic emissions of greenhouse gases....These Parties may implement such policies and measures jointly with other Parties.”

## Massachusetts vs EPA (US Supreme Court)

- “The harms associated with climate change are serious and well recognized.”
- “The risk of catastrophic harm, though remote, is nevertheless real.”
- “Epa’s steadfast refusal to regulate greenhouse gas emissions presents a risk of harm to Massachusetts that is both “actual” and “imminent.”

# The legal duty of care

More or less universal criteria for the reasonable man standard, the standard of an average careful person duly balancing risk and care.

1. How apparent is the danger
2. How great is the chance that the danger will manifest itself
3. How serious is the danger and its consequences
4. What extent of responsibility of defendant vs claimant (proximity)
5. How objectionable are preventive measures

# The legal duty of care

1. How apparent is the danger
2. How great is the chance that it will manifest itself
3. How serious is the danger
4. Extent of responsibility (proximity)
5. How objectionable are preventive measures

## The legal duty of care

1. How apparent is the danger (2°C: scientifically +politically underpinned)
2. How great is the chance that it will manifest itself
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## The legal duty of care

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2. How great is the chance that it will manifest itself (heading for 4-5°C)
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# The court on duty to avert dangerous climate change

1. Given the high risks the state has a duty to take measures to prevent it
2. Reductions of 25% in 2020 are not disproportional and are feasible
3. It is not decisive that reductions will have minor effect on a global scale.

# Civil society and Union involvement in climate change

1. Strong engagement of civil society after the verdict
2. Dialogue between stakeholders and politics continues
3. From if and when to how
4. The role of labour unions
5. No jobs on a dead planet



**IT ALWAYS SEEMS  
IMPOSSIBLE  
UNTIL IT'S  
DONE**

**- Nelson Mandela -**