Legal Analysis / L'analyse juridique

| A New Threat to Life: Examining the Environmental Reach of Section 7 of the Canadian Charter of Rights and Freedoms

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Keywords: Supreme Court of Canada, Canadian Charter of Rights and Freedoms, environmental law, section 7, right to a healthy environment, expanding Charter rights.

Mots-clés: Cour suprême du Canada, Charte canadienne des droits et libertés, droit de l'environnement, article 7, droit à un environnement sain, l'expansion des droits de la Charte.

Despite having one of the most progressive constitutions in the world, Canada's Charter of Rights and Freedoms lacks any explicit environmental protection rights. With the recent increase in global environmental advocacy, the search for environmental protections through the Canadian courts has never been higher. In this paper, I examine whether the Supreme Court of Canada (SCC) would expand the scope of section 7 of the Charter of Rights and Freedoms to encompass the right to a healthy environment. To answer this, I conduct a legal analysis of SCC case judgements involving s. 7 Charter claims within the last ten years. The two main variables that I am testing in this analysis are the scope of s. 7 and the presence of judicial activism. My findings indicate that SCC Justices would not find the right to a healthy environment in s. 7 due to a low presence of judicial activism and generally narrow interpretations of s. 7 in recent rulings. However, the findings do indicate that s. 7 could extend to environmental policy in a limited manner.

Malgré le fait que le Canada détient une des constitutions les plus progressives au monde, la Charte canadienne des droits et libertés est dépourvue de droits explicites à la protection environnementale. Étant donné la montée récente des plaidoyers environnementaux à l'échelle globale, la recherche des protections environnementales par le biais des tribunaux canadiens n'a jamais été aussi marquante. Dans le présent document, j'examinerai la possibilité de l'élargissement de la portée de l'article 7 de la Charte canadienne des droits et libertés par la Cour suprême du Canada (CSC) pour inclure le droit à un environnement sain.

Afin de répondre à cette question, j'effectuerai une analyse juridique des jugements de la CSC concernant l'article 7 de la Charte canadienne au cours des dix dernières années. J'évalue deux variables principales : la portée de l'article 7 et la présence de l'activisme judiciaire. Mes conclusions indiquent que les juges de la CSC n'incluraient pas le droit à un

Introduction

In recent years, environmental law has become increasingly relevant. The Constitution has become a key avenue for achieving environmental justice in Canada, likely the result of the global trend of environmental advocacy (Worstman 2019, 247; Cohen 2022). Canadian media in particular, has given environmental issues attention: the Trans-Mountain Pipeline project, Fairy Creek old-growth logging, and unclean water in Indigenous communities are just a few examples of environmental issues that have come under public scrutiny (Charlebois 2022; Nair 2021; Munro 2021). The search for environmental protections through the Canadian courts has never been more important.

Yet despite having one of the most influential constitutions in the world, Canada's Charter of Rights and Freedoms lacks any explicit environmental protection rights (Schwartz 2012). In contrast, the constitutions of 147 countries contain "explicit references to environmental rights and/or responsibilities" (Boyd 2012, 68). This has raised two important questions; would the Canadian government amend the Charter to adopt such a right, or would they expand the scope of an already existing constitutional basis for environmental protections? Based on Canada's historical hesitancy toward amending the Charter and its strict amendment procedures, it seems unlikely that the government would move forward with including such a right (Boyd 2012). This leaves us with the section option: expanding the scope of an already existing right.

The Charter right most relevant to environmental protection is section 7— "the right to life, liberty, and security of the person in accordance with the principles of fundamental justice" (Canadian Charter of Rights and Freedoms, 1982). In this paper, I examine how likely the Supreme Court of Canada (SCC) would be to expand the scope of s. 7 of the Charter to encompass the right to a healthy environment in Canada's current legal landscape. I will begin by examining academic literature on this topic. I will then describe my data and methodology, before moving to an analysis of the results. I will conclude with a discussion of my findings and their impact on academic and public discourse. I argue that the justices are unlikely to expand the scope of s. 7 due to its historically narrow interpretation and declining cases of judicial activism. I will define my assessment of a 'narrow interpretation' as well as 'judicial activism' in my research methods section.

Literature Review

Literature on environmental rights in relation to the Canadian Charter is extensive. There is consensus among academics that the Charter *should* and eventually will encompass the right to a healthy environment. In this literature, there are both normative and empirical fields. Both address the role of international norms, the living tree approach, positive rights, and direct threats to life or high risk of harm.

International Influence

Normative authors like Andrew Gage and David Boyd explore the influence of international law in promoting constitutionally protected environmental rights in Canada. Gage suggests that the scope of s. 7 may be expanded, considering international decisions made by the Human Rights Committee, Supreme Court of India, and courts in Pakistan and Bangladesh (2003, 8-10). The question that arises from this suggestion is how impactful international law is in domestic settings. Boyd asserts that "it is well established that international law influences national law"; however, it is unclear from this whether these international statutes and norms would directly encourage constitutionally protected environmental rights (2012, p. 122). Boyd's claim suggests that international law influences domestic policy making, but it is nonetheless distinct from constitutional law; thus, the influence of international environmental law in promoting an expansion of s. 7 is questionable.

The Living Tree Approach

Another point of contention in normative papers is the Court's use of the living tree approach, a doctrine that interprets the Constitution broadly to adapt it to contemporary values. Boyd claims that other scholars agree that the wording of s. 7 is broad enough to encompass the right to a healthy environment (2012, 177). He goes on to suggest that the courts have "deliberately left the door open" regarding incorporating environmental protection within s. 7 (Boyd 2012, 179). While it is possible for constitutionally protected environmental rights to emerge through an expansion of s. 7 as Boyd envisions, it is not clear how or when this may occur. Hence, the living tree approach does not adequately address all questions on this topic.

Positive Rights

Another main channel of scholarship focusses on the extent to which the Charter protects positive rights. Feasby et al. (2020) mention how s. 7 is commonly assumed to be a negative right, however, they do acknowledge that the distinction between positive and negative rights is not always clear (239). Despite this, they argue that s. 7 is unlikely to include a positive obligation for the environment due to the court's previous unwillingness to uphold positive rights (241). This argument contrasts Boyd, Worstman, Harmun, and Chalifour, who argue that

s. 7 should and does include a positive obligation (2012; 2019; 2010; 2015). Despite this claim, Boyd suggests the Court may not apply positive environmental rights soon (2012). He quotes former Chief Justice McLachlin, who wrote,

> Nothing in the jurisprudence thus far suggests that s.7 places a positive obligation on the state … Rather, s.7 has been interpreted as restricting the state's ability to deprive people of these [rights] … One day s.7 may be interpreted to include positive obligations … However, this is not such a case. (Boyd 2012, 179).

Thus, it remains unclear when the courts might interpret a positive obligation to a healthy environment.

Fulfilling the Section 7 Test

Other scholars argue that current interpretations of s. 7 already extend to environmental protections. Worstman (2019) argues that environmental issues can be a direct threat to life if courts use evidence demonstrating risk and probability of harm rather than direct causation. Gage, Chailifour, Nanda, and DeWolf contest this claim (2003; 2015; 2015; 2015). They argue that previous court cases suggest a substantial amount of evidence is required to prove a direct cause of harm rather than a possibility. Gage and DeWolf further assert that the best avenue for environmental cases is security of the person since it does not require direct causation (2003; 2015). This indicates that although there is a possibility of extending s. 7, it would be difficult to apply broadly.

Public health claims are difficult to establish under s.7 because they involve the actions of private companies rather than those of government. As Gage notes, "private activity" is not subject to the same Charter obligations as government action (2003, 12). The government could enact tighter environmental regulations on the basis of the right to a healthy environment, but it would then assume a new burden of Charter responsibility. Thus, the government hesitates to legislate the right to a healthy environment because it would broaden their vulnerability to further Charter challenges for "underinclusiveness" (Gage 2003, 12).

The right to a healthy environment under s.7 is limited and often idealistic. Chalifour observes that proving a causal relationship between harm and government action is difficult and would complicate enforcing the right to a healthy environment (2015, 1). DeWolf's thesis is the most critical of the scholarly literature; she asserts that much of the field's scholars do not conduct proper legal analysis for their s. 7 environmental claims and are therefore too normative. She claims Boyd and Collins "do not provide a neutral legal opinion on whether the approaches advocated for will actually be successful in front of a court of law" (DeWolf 2015, 12). Hence,

progressive scholars' claims to existing environmental protections under s. 7 are either too normative or are not based on current legal principles (DeWolf, 2015, 14).

Overall, literature advocating for environmental protections on the basis of s. 7 fails to recognize *when* and *how* this broadening of s. 7 may happen. Recent cases show declining levels of judicial activism and a narrowing of s. 7 which suggests that constitutionally protected environmental rights could be further away than they seem, and any possible protections may be limited in scope. Furthermore, proponents for environmental constitutional protections do not specify what types of environmental rights may be protected, or the contexts in which they may emerge. The following sections of this paper analyze recent Supreme Court cases to outline how, when, and why the right to a healthy environment may arise. In doing so, I hope to guide further scholarly and judicial interventions on the future of Canada's environment.

Research Methods

In this paper, I conduct a problem-solving legal analysis that predicts how the courts will respond to a new legal question). The data sources used for the analysis are legal cases based on a threefold criterion. The legal cases must: (1) be SCC judgements (2) decided within the last ten years (January 1, 2012 – January 1, 2022) and (3) involve a s. 7 Charter claim. This paper analyzes fourteen cases under these criteria, though no suitable cases were heard in 2017, 2018, 2020, and 2022. Alongside the aforementioned criteria, the analysis also considers the presence of judicial activism.

If my thesis is correct in arguing that prospects for constitutional protections for the environment are weak, then I expect decisions to indicate a narrowly defined scope of s. 7 and a low presence of judicial activism. If my thesis is incorrect, I expect to find a broadly defined scope of s. 7 and a high presence of judicial activism.

For a narrowly defined scope, judgements should rely heavily on precedent in their s. 7 analysis and not include language signifying the principles of the living tree approach. This type of language includes references to the evolving nature of the Charter, including the necessity to adapt the document to social issues rather than be interpreted in its original context. For a broadly defined scope, judgments should not rely heavily on precedent and should include language synonymous with the principles of the living tree approach.

Indicators of judicial activism include decisions requiring government expenditure, findings of s. 7 violations, the exercising of positive rights, justices 'reading-in', and a lack of deference to the legislature or the separations of powers between branches of government. Criticism of such

indicators in dissenting opinions would also suggest high levels of judicial activism.[1] For low levels of judicial activism, I expect to see remedies not requiring government expenditure, decisions finding no violations of s. 7, an emphasis on negative rights, 'reading-down', deference to the legislature, acknowledgement of the roles of different governmental branches, and dissenting opinions that appeal to judicial activism

There are some limitations to this methodology. First, the criteria for the data sources are quite narrow. This case selection does not account for judgements made in lower courts, parliamentary references, and cases prior to 2012. Second, the variables 'narrow/broad scope' and 'low/high judicial activism' are subjective and some scholars may disagree with my chosen measurements for these concepts. Yet I have chosen to restrict this paper in this way due to time and space constraints and because a narrow case selection provides a more in-depth analysis.

Findings

I have structured my results according to the factors that I will be testing the cases against. For each section, I have outlined the trends that I discovered among all cases and highlights from a few key cases. An overview of the results of all the cases is at the end of the analysis (see table 1).

Scope of Section 7—Precedent

In the majority of the fourteen cases, the SCC's decisions relied heavily on precedent. These cases include *R. v. St-Onge Lamoureux* (2012), *R. v. Khawaja* (2012), *Canada (Citizenship and Immigration) v. Harkat* (2014), *R. v. Anderson* (2014), *R. v. Smith* (2015), *R. v. Appulonappa* (2015), *R. v. Safarzadeh-Markhali* (2016), *R. v. Cawthorne* (2016), *R. v. Morrison* (2019), and *R. v. C.P* (2021). In these cases, Judges ruled conservatively by refusing to re-evaluate precendent. This is particularly evident in *Khawaja*, *Appulonappa*, and *Safarzadeh-Markhali* where the Court based their decisions on tests for overbreadth. In *Anderson*, the Court refused to broaden the scope of the principles of fundamental justice, citing strong precedent.

Canada (Attorney General) v. Bedford (2013) and *Canada (Attorney General) v. Federation of Law Societies of Canada* (2015) established significant precedent that remains important for s. 7 challenges today. The landmark decisions differed from previous cases because Judges departed from previous judgements and instead employed principles from past cases to

[1] This paper uses the definitions of "reading-in" and "reading-down" as provided by the Government of Canada. When courts 'read in', they are "broadening the reach of the legislation" to reject any "implied limitation on its scope" (Government of Canada, 2022). In contrast, 'reading down' involves limiting the reach of the legislation by narrowly defining it or placing it under exclusions (Government of Canada, 2022).

establish precedent. For example, Bedford departed from the 1990 *Prostitution Reference* by bringing about a new legal test that protected positive liberties under the s. 7 right to personal security. The decision therein suggested a commitment to positive principles of fundamental justice and as a result became a heavily cited decision in future cases. *Federation of Law Societies* (2015) also clarified that "the lawyer's duty of commitment to the client's cause" did not constitute a principle of fundamental justice protected under s. 7, though justices disagreed on this point (118-119).

Carter v. Canada (Attorney General) (2015) was unique because it both dismissed and embraced precedent. The Court chose to allow a re-evaluation of precedent set in *Rodriguez v. BC* (1993) after the emergence of a new legal issue and new evidence fundamentally shifted the parameters of the debate. At the same time, the Court refused to consider an expansive definition of the right to life, citing strong precedent despite legal arguments put forth by intervenors and dissenting judges in lower courts. *R. v Conception* (2014) cannot be classified in either category since s. 7 analysis was minimal and relied on lower court judgements.

Applying The Living Tree Approach

The majority of cases did not include language synonymous with the living tree approach in their s. 7 analyses. These cases include *R. v. St-Onge Lamoureux*, *R. v. Khawaja*, *R. v. Anderson*, *Carter v. Canada*, *R. v. Conception*, *R. v. Safarzadeh-Markhali*, *R. v. Cawthorne*, *R. v. Morrison*, and *R. v. C.P*.

The cases of *Canada (Attorney General) v. Bedford*, *Canada (Attorney General) v. Federation of Law Societies of Canada*, *R. v. Smith*, and *R. v. Appulonappa* adopted the living tree approach. In *Bedford*, the Judges note "the principles of fundamental justice have significantly evolved since the birth of the Charter" (2013 SCC 72, at para. 95). They argue that the principles of fundamental justice should be interpreted to capture laws that do not align with the Charter's values, rather than as principles of "natural justice" (at para. 95). This suggests that the majority judgement adopted the living tree approach in straying away from a narrow interpretation.

The case of *Canada (Citizenship and Immigration) v. Harkat* is unique because it renders a judgement while acknowledging that its decision is limited to the specific context of the case. The Court writes that its judgement is not universally applicable to all cases and judges must use their discretion to determine whether the scheme established in *Harkat* is constitutional in each given case (2014 SCC 37, at para. 77). This suggests that the Court acknowledges the living tree approach's value but limits its application.

Judicial Activism & Government Expenditure

Of all fourteen cases, only one contained a remedy that required government expenditure: *Carter v. Canada (Attorney General)*. The Court employed a rare remedy by requiring the government to pay for the appellants' legal costs (2015 SCC 5, at para. 148). The majority writes that although "it is unusual for a court to award costs against an Attorney General who intervenes in constitutional litigation as of right" the Attorney General is liable to pay legal fees just the same as any other party in litigation may be (at paras. 144, 146).

However, this unusual case is not evidence of judicial activism as it is not beyond the scope of the judiciary's function to award legal damages. In *Carter*, the Court promoted legal accessibility by assigning costs to the government in a public interest case that involved claimants unable to fund their legal claims. The Court, in other words, did not act outside its scope by requiring government expenditures normally under the parliament's jurisdiction.

Nor did the Court mandate government expenditures in other s. 7 challenges, including *R. v. Khawaja*, *Canada (Attorney General) v. Bedford*, *Canada (Citizenship and Immigration) v. Harkat*, *Canada (Attorney General) v. Federation of Law Societies of Canada*, *R. v. Smith*, *R. v. Appulonappa*, *R. v. Safarzadeh-Markhali*, and *R. v. Safarzadeh-Markhali*. In *R. v. St-Onge Lamoureux*, *R. v. Conception*, and *R. v. C.P*. the appeals were dismissed. Thus, no remedy was employed and these cases are not relevant to this section of the analysis.

Positive vs. Negative Rights

In no judgement between 2012—2022 did the Court explicitly champion for positive rights. This could be due to Gage's claim that s. 7 is an inherently negative right and does not place a positive obligation on the state (2003). The only decision that acknowledges any positive obligation is *Canada (Citizenship and Immigration) v. Harkat*, as the judges argue that s. 7 requires a fair process. However, the Justices dismissed Harkat's s. 7 claim and consequently, there was no exercise of positive rights. Similarly, in the cases of *R. v. St-Onge Lamoureux*, *R. v. Khawaja*, *R. v. Conception*, *R. v. Cawthorne*, *R. v. Morrison*, and *R. v. C.P.* all s. 7 claims were lost and no exercise of positive (or negative) rights occurred.

In the cases of *Canada (Attorney General) v. Bedford*, *R. v. Anderson*, *Carter v. Canada (Attorney General)*, *Canada (Attorney General) v. Federation of Law Societies of Canada*, *R. v. Smith*, *R. v. Appulonappa*, and *R. v. Safarzadeh-Markhali* the Court was found to be exercising negative rights. This was because the Court's remedies often involved striking down provisions that they argued the government erred in enacting. By preventing the government from limiting s. 7, these cases placed a negative duty on the state.

Reading In vs. Reading Down

No evidence of reading-in was found in any of the fourteen cases. This is because no case broadening the reach of legislation. Instead, the Court struck down legislation, severed words, or otherwise narrowly interpreted the Charter so that the Court found no violation of s. 7.

Critiques from Dissenting or Concurring Judges

Only in one case did a concurring or dissenting judge suggest that the Court was being too activist: *Canada (Attorney General) v. Federation of Law Societies of Canada*. In this case, the majority reasoned that the lawyer's duty of committed representation "satisfies the first and third requirements of a principle of fundamental justice" (2015 SCC 7, at para. 94). Chief Justice McLachlin and Justice Moldaver critiqued this decision in their concurring judgement, arguing that the principle "lacks sufficient certainty to constitute a principle of fundamental justice" as outlined in *R. v. Malmo-Levine* (2015 SCC 7, at para. 119). This suggests that the majority judgement took a broader or more activist approach in their classification.

In *R. v. Conception* and *R. v. Morrison* critiques in the concurring judgement suggest that the majority judgement displayed low levels of activism. In *R. v. Conception*, there is much discussion about the trial judge's right to issue a forthwith treatment order. According to the majority judgement, the trial judge erred in this order because the law requires hospital consent (2014 SCC 60). In contrast, the concurring judgement argues that the trial judge did have jurisdiction to make the order and only erred in the order's timing (2014 SCC 60, at para. 131). As a result, the majority judgement displayed low levels of judicial activism.

In *R. v. Morrison*, the concurring judgement suggests that the majority erred in their remedy. Justice Karakatsanis argues that "building a safety valve—residual discretion—into mandatory minimum provisions would … [allow] judges to make an exception in cases where the mandatory minimum would prove unconstitutional" (2019 SCC 15, para. 194). This is a more activist approach than the majority judgement, as Karakatsanis is arguing for the Court to engage in policy making.

In *R. v. St-Onge Lamoureux*, *Canada (Citizenship and Immigration) v. Harkat*, and *R. v. C.P.*, dissenting or concurring judges expressed no relevant critiques. In *R. v. Khawaja*, *Canada (Attorney General) v. Bedford*, *R. v. Anderson*, *R. v. Smith*, *R. v. Appulonappa*, *R. v. Safarzadeh-Markhali*, and *R. v. Cawthorne* there were no dissenting or concurring judgements to analyze; thus, these cases were not applicable for this section.

Deference to Legislature & Acknowledgement of Different Roles of Government

Six cases displayed evidence of some type of deference to parliament. These cases were *R. v. St-Onge Lamoureux*, *Canada (Attorney General) v. Bedford*, *R. v. Anderson*, *Carter v. Canada (Attorney General)*, *R. v. Cawthorne*, and *R. v. C.P.* In *St-Onge Lamoureux*, the Court asserted that they "must not second-guess parliament" in relation to the minimal impairment requirement (2012 SCC 57, at para. 39). In Bedford, the judges wrote that "it will be for Parliament, should it choose to do so, to devise a new approach, reflecting different elements of the existing regime" (2013 SCC 72, at para. 165). This is even clearer in *Anderson*, where the Court clearly defined that "judicial non-interference is a matter of principle based on the doctrine of separation of powers" and that "the prosecutor's decision is a matter of prosecutorial discretion which is reviewable by the courts only for abuse of process" (2014 SCC 41, at para. 1). In addition, they assert that "it is the judge's responsibility to impose sentence… [and] to craft a proportionate sentence" (2014 SCC 41, para. 25). *Carter* re-affirms the roles of the judiciary and legislature by acknowledging that issuing a constitutional exemption would "usurp Parliament's role" adding that "complex regulatory regimes are better created by Parliament than by the courts" (2015 SCC 5, at para. 125). The Court compounded their parliamentary deferral by stating, "we make no pronouncement on other situations where physician-assisted dying may be sought" (2015 SCC 5, at para. 127). *Cawthorne* and *C.P.* demonstrate more subtle deferrals to parliamentary power.

One case, *R. v. Safarzadeh-Markhali*, contained language that was more in favour of the court's expanded role. Here, the Court argued that "Parliament can limit a sentencing judge's ability to impose a fit sentence, but it cannot require a sentencing judge to impose grossly disproportionate punishment" (2016 SCC 14, at para. 71). Here, the Court reiterates parliament's reach rather than the judiciary's. *R. v. Appulonappa* displayed evidence of the Court being critical towards parliament, however, there was no discussion of the role of government.

Six cases contained no evidence of parliamentary critique: *R. v. Khawaja*, *Canada (Citizenship and Immigration) v. Harkat*, *Canada (Attorney General) v. Federation of Law Societies of Canada*, *R. v. Smith*, *R. v. Conception*, and *R. v. Morrison*.

Discussion

An overview of all the cases and their results are below. I will begin with some clarifications. First, I have decided to classify *R. v. Smith* as a broad scope decision despite its reliance on precedent because the Court was expanding the scope of s. 7 into a new policy area—medical marihuana—and because it uses the living tree approach. Second, I've defined Carter as narrow scope because the Court's re-evaluation of precedent was due to a fulfillment of a legal test that is a part of precedent. For this reason, I did not place much emphasis on the court's re-evaluation of their previous judgment as a broadening of the scope.

Table 1

Summary of Cases and Variables

Year	Case	Violation Found?	Scope	Judicial Activism
2012	R. v. St-Onge Lamoureux	No	Narrow	Low
2012	R. v. Khawaja	No	Narrow	Low
2013	Canada (Attorney General) v. Bedford	Yes	Broad	Low
2014	Canada (Citizenship and Immigration) v. Harkat	No	Narrow	Low
2014	R. v. Anderson	No	Narrow	Low
2015	Carter v. Canada (Attorney General)	Yes	Narrow	Low
2015	Canada (Attorney General) v. Federation of Law Societies of Canada	Yes	Broad	Low
2015	R. v. Smith	Yes	Broad	Low
2015	R. v. Conception	No	Narrow	Low
2015	R. v. Appulonappa	Yes	Broad	Low
2016	R. v. Safarzadeh-Markhali	Yes	Narrow	Low

2016	R. v. Cawthorne	No	Narrow	Low
2019	R. v. Morrison	No	Narrow	Low
2021	R. v. C.P.	No	Narrow	Low

Overall, my hypothesis is not entirely supported as demonstrated by a few cases of a broad scope cases—*Bedford*, *Federation of Law Societies*, *Smith*, and *Appulonappa*). However, there is a clear trend of low judicial activism. This suggests that s. 7 could encompass the right to a healthy environment in a very limited manner. Cases with a broad scope where the Court applied s. 7 were often in new policy areas—prostitution, independence of the bar, medical marihuana, and human trafficking. Nonetheless, s. 7 interpretations remained narrow.

Overall, the findings suggest that section 7 could move to the environmental policy area, but not broadly encompass the right to a healthy environment. The trend of low judicial activism suggests that the SCC is unlikely to broadly encompass the right to a healthy environment within s. 7 as this would constitute exercising positive rights, interfering with Parliament's role, and most likely involve government expenditure. In contrast to Boyd's argument (2012), my findings suggest that it would be difficult to bring an environmental case that creates a positive obligation on the state to the SCC.

The judgements indicate that the Court could possibly expand section 7 in cases where the government is directly causing a threat to life or security of the persons. This is, however, a strict and limiting criteria and would prove difficult to claim at the Supreme Court. Climate-related cases or cases involving third parties are not likely to succeed as per this criterion. This is especially evident in cases of contrasting expert evidence, such as in the case of the Trans-Mountain Pipeline, where no definitive risk of harm can be established.

Conclusion

This paper contributes to the literature by arguing that section 7 of the Charter is not likely to encompass the right to a healthy environment. Though many contemporary legal scholars argue it eventually will, recent cases of the SCC suggest otherwise. As outlined in the research methods section, this paper has limitations; there is a narrow case selection and it employs subjective measurements for abstract concepts. It is important to note that my thesis is grounded in the hypothetical question of whether judges would expand the scope of s. 7 if they received a case requiring such a decision based on current precedent. The answer to this

question will vary across time as the Court hears new environmental cases and discussions on current s. 7 tests evolve. Amid these developments, the Supreme Court may well expand the scope of s. 7. Until then, scholars would do well to study non-section 7 cases in lower courts outside of this paper's ten-year timeframe.

In terms of the impact of these findings on the Canadian public, I suggest that it encourages legal discussion on environmental rights. While political participation is crucial to creating change in Parliament, Canadians should also consider the Supreme Court as an actor in environmental politics. As evidenced in the findings, the SCC has re-evaluated judgements they have made in the past and expanded s. 7 to new policy areas. Bringing environmental politics into changing understandings of the Charter of Rights and Freedoms could benefit both environmental and judicial policy.

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