

McGill Law Journal accessible summary:

Anti-discrimination law as a tool for addressing climate change related inequalities

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Topic and importance

Climate change is a global phenomenon that disproportionately harms marginalized populations. Although it is increasingly recognized as a human rights issue, no successful claims have yet been brought under the Canadian Charter of Rights and Freedoms in Canada. This article therefore examines whether human rights laws, which protect against discrimination, could serve as an effective tool to address inequities arising from climate change.

Main arguments

The author argues that existing anti-discrimination laws in Canada could help remedy climate-related inequities. The article begins with an overview of Canadian human rights law, emphasizing the role of anti-discrimination statutes in advancing social justice. It also highlights human rights laws, because they are quasi-constitutional, need to be interpreted broadly and in a manner that promote their purpose.

The article then shifts into an analysis of four potential complaints that could be filed in relation to climate change disparities. The first example provided would be a complaint filed for failure to implement proper adaptation measures for vulnerable groups. The author ties this idea to the duty to accommodate, which is part of Canada's human rights law framework. For example, in an emergency caused by a flood or wildfire, special steps must be taken to support persons with disabilities who face particularly barriers.

The second way to address climate change-related inequities is through the recognition of climate consciousness as a distinct ground of discrimination. This means that people who feel strongly about protecting the environment would be protected against discrimination. The author makes the link about environmental consciousness and other traits that are protected from discrimination like creed, age, or disability. Given that climate consciousness does not perfectly fit within each of these specific grounds despite some similarities, the author suggests adding it as a distinct ground of discrimination, which would afford those engaging in mitigation efforts the same protection as complainants seeking recourse under other grounds of discrimination.

Third, the author argues that government mitigation efforts should be considered as a service under human rights laws. This means that government would need to prevent climate change from harming certain groups protected by human rights laws more than others. Finally, the article advocates holding high greenhouse gas-emitting companies accountable for the disproportionate harm they cause to marginalized communities.

Conclusion and additional considerations

Climate change threatens fundamental rights and exacerbates existing inequalities. Strengthening accountability through human rights statutes would enhance Canada's legal framework while aligning with the adaptive principles of the living tree doctrine.