

Case summary

Thomas & De Freitas v Attorney-General of Guyana

- First climate change constitutional case in the region
- Unique carbon sink
- Is this a [carbon bomb](#)

This case is unique among climate change cases for the simple reason that Guyana is a carbon sink. Unlike countries like the Netherlands which have been ordered to cut emissions, Guyana is not responsible for climate change. Guyana's forests extract from the atmosphere more greenhouse gases than its population emits making Guyana one of the world's few carbon sinks. Guyana is a climate leader and a model for the rest of the world to follow. But this carbon sink status is threatened by the Guyana government's support for oil production.

The case asks the court to determine through a series of declarations whether greenhouse gas emissions, from ExxonMobil's proposed production of over 8 billion barrels of oil, are consistent with the right to a healthy environment.

The Constitutional right: Article 149J of the Constitution of Guyana says that everyone has a right to an environment that is not harmful to his or her health or well-being. It requires the State to protect the environment for present and future generations, through reasonable legislative and other measures designed to prevent pollution and ecological degradation, promote conservation and secure sustainable development and use of natural resources while promoting justifiable economic and social development.

The Applicants: The case is brought by Dr Troy Thomas and Quadad de Freitas, two Guyanese citizens. Dr Troy Thomas is a scientist and the Dean of the Faculty of Natural Sciences at the University of Guyana. He brings the case on his behalf, on behalf of his two young sons and in the public interest. Quadad de Freitas is an indigenous Wapichan youth from the Rupununi region of Guyana. His family are ranchers, ecotourism operators and conservationists who depend on the environment for their livelihoods. He brings the case on his behalf and in the public interest.

The lawyers: Dr Thomas and Mr De Freitas are represented by Melinda Janki and Ronald Burch-Smith. Richard Lord QC and Joshua Jackson are also part of the legal team.

Evidence: The Fixed Date Application (FDA) and affidavits set out extensive scientific evidence from the Inter-Governmental Panel on Climate Change (IPCC) and other bodies such as the Union of Concerned Scientists, showing the impacts that greenhouse gas emissions have on the earth. One of the exhibits put before the court is an extract from an internal review produced by Exxon Research and Engineering Company which warned Exxon in 1982 that that the 'greenhouse effect' would *"warm the earth's surface causing changes in climate affecting atmospheric and ocean temperatures, rainfall patterns, soil moisture and over centuries melting the polar icecaps."* This was a remarkably accurate prediction by Exxon scientists nearly 40 years ago of the impact of greenhouse gases - with the exception that the polar icecaps are melting now, not in centuries to come.

Climate change: Affidavit evidence includes the IPCC's warning that the temperature of the earth has increased by approximately 1°C. That warming has resulted in extreme weather conditions and impacts including extreme heat, droughts, the melting of glaciers, fires in the Arctic and the Amazon and floods.

Guyana's draft Climate Resilience Strategy and Action Plan 2015 stated that *"39% of Guyana's population and 43% of its GDP are located on the coastal zone in regions that are exposed to significant flooding risk."* Shortly after the case was filed on 21st May 2021, unseasonal and extreme rainfall in Guyana resulted in widespread flooding and the President declared a [national disaster](#).

The Ocean: The case addresses the impact of greenhouse gases on the ocean and marine ecosystems. As the ocean absorbs the excess CO₂ it becomes more acid. This ocean acidification is harmful to marine wildlife and marine ecosystems. The case quotes from the IPCC's Special Report on the Ocean and Cryosphere in a Changing Climate. The ocean is also becoming warmer. The case cites Guyana's National Climate Change Policy and Action Plan 2020-2030 Draft 2.0 which warns that changes in temperature will affect Guyana's marine fishing industry.

Sea-Level Rise: Much of Guyana's coast is low-lying or already below sea-level. The capital city Georgetown relies on a sea-wall to protect it from the Atlantic Ocean. Affidavit evidence includes Guyana's draft Climate Resilience Strategy and Action Plan 2015 which warned that Guyana is particularly vulnerable to sea-level rise. The affidavit cites the IPCC report 'Climate Change 2007 Fourth Assessment Report' which stated that, *"In Guyana, 90% of its population and its important economic activities are located within the coastal zone and are threatened by sea level rise and climate change."*

Government statements: The case puts before the court the Government's admissions of the impact of climate change. For example paragraph 24 of Dr Thomas' affidavit contains Vice-President Jagdeo's admissions that the science of climate change has already been proven and accepted. Paragraph 36 quotes President Ali's warning that, *"The adverse and potentially catastrophic impacts of climate change are already conspicuous."* Guyana's nationally determined contribution states that Guyana will pursue a low carbon development path. It also commits Guyana to 100% renewable energy by 2025 subject to financing being available.

International law:

International law could also have a significant impact on the case. Article 38 of the Constitution requires the court to pay due regard to international law when it interprets Article 149J and certain provisions of the Constitution. Guyana is a party to the United Nations Framework Convention on Climate Change and to the Paris Agreement.

Note: The Constitution also requires Parliament, the government and the court to be guided by Article 36 which states that *"The wellbeing of the nation depends upon preserving clean air, fertile soils, pure water and the rich diversity of plants, animals and eco-systems."* This provision was drafted by Melinda Janki, the lawyer leading the litigation team.