COURT OF APPEAL OF ALBERTA

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IN THE MATTER OF THE *GREENHOUSE GAS POLLUTION PRICING ACT*, SC 2018, c. 12

Distributed to Panel

AND

IN THE MATTER OF A REFERENCE BY THE LIEUTENANT GOVERNOR IN COUNCIL TO THE COURT OF APPEAL OF ALBERTA UNDER THE *JUDICATURE ACT*, RSA 2000, c. J-2, s. 26

DOCUMENT: **REPLY FACTUM OF THE ATTORNEY GENERAL OF CANADA**

REFERENCE BY THE LIEUTENANT GOVERNOR IN COUNCIL
TO THE COURT OF APPEAL OF ALBERTA
Order in Council filed the 20th day of June, 2019

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PART I – OVERVIEW AND STATEMENT OF FACTS

A. Overview

1. In this factum, the Attorney General of Canada (Canada) replies to the submissions made by the Attorney General of Saskatchewan (Saskatchewan), the Attorney General of Ontario (Ontario), the Attorney General of New Brunswick (New Brunswick), SaskEnergy Incorporated and Saskatchewan Power Incorporated (SaskEnergy/SaskPower), and the Canadian Taxpayers Federation (CTF).

2. On the question of whether the *Greenhouse Gas Pollution Pricing Act* (*Act*) comes within Parliament's peace, order, and good government (POGG) jurisdiction to address a matter of national concern, Saskatchewan presents a 'watertight compartments' view of federalism that amounts to saying that inter-jurisdictional immunity applies broadly to every provincial and federal head of power. However, the Supreme Court of Canada has long rejected this view of federalism. Otherwise, all of these Intervenors' arguments addressing the POGG issue are substantively similar to the arguments of the Attorney General of Alberta (Alberta), so they are largely already addressed in Canada's Factum.

3. The charges created by the *Act* are valid regulatory charges that are connected to the objects and scheme of the *Act*. The *Act* creates a comprehensive regulatory scheme. The *Westbank* indicia for a regulatory scheme are present: the *Act* is a complete, complex, and detailed code of regulation; it has a regulatory purpose which seeks to affect some behaviour because the charges encourage the behavioural changes and innovation necessary to reduce greenhouse gas (GHG) emissions; and there is a relationship between the scheme and those who are subject to it, who both cause the need for and will ultimately benefit from the regulation. At the second stage of *Westbank*, the necessary relationship between the charges and the scheme is also established. There is no requirement that the revenues be tied to the costs of the scheme. Thus, the charges are valid regulatory charges and not taxes.

4. Even if this Court finds that the charges are taxes, the *Act* does not impermissibly delegate more than the details and mechanisms of the charges, and their implementation otherwise complies with the requirements of s. 53 of the *Constitution*.

B. Additional relevant facts

5. At paragraphs 12-13 of its Factum, Saskatchewan states that it supports Canada's commitment under the *Paris Agreement* and describes some of its GHG emissions mitigation measures. While Saskatchewan is taking GHG emissions mitigation measures, from 2005 to 2017, Saskatchewan's emissions increased by 18%. Its plan does not include an overall emissions reduction target. Saskatchewan's GHG emissions in 2005 were 68 Mt CO_2e. Based on Canada's 2019 National Inventory Report (NIR), if Saskatchewan was aiming to achieve a 30% reduction below 2005 levels by 2030, its target would need to be 47.6 Mt CO_2e, which is 30.4 Mt CO_2e less than its 2017 emissions. Nothing in Saskatchewan's current plan suggests this level of ambition.[1]

6. Under Ontario's current plan, Ontario has committed to reducing its emissions by 30% below 2005 levels by 2030.[2] Based on Canada's 2019 NIR, this would mean a 2030 target of 142.8 Mt CO_2e. Ontario's current target is less ambitious than it was at the time it and Alberta agreed to the *Pan-Canadian Framework*. At that time, Ontario's target was 37% below 1990 levels by 2030, which would have meant a 2030 target of 113.4 Mt CO_2e (a 29.4 Mt CO_2e difference).[3] The parties to the *Pan-Canadian Framework* would have understood that for Canada to meet its current *Paris Agreement* target, either all provinces must achieve a 30% reduction below 2005 levels by 2030, or some provinces must exceed this reduction target to accommodate provinces, like Alberta, that may not be able to do so due to differences in the nature of provincial economies and resources.

7. The CTF's entire statement of facts should be disregarded. It relies on inadmissible opinion evidence and is contradicted by the admissible expert evidence before this Court. Mr. Wudrick's affidavit consists almost entirely of opinion evidence, but he is not presented as an expert witness. Moreover, his opinions regarding "energy poverty" disregard measures, such as the Climate Action

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[1] Record and Evidence of the Attorney General of Saskatchewan, Tabs 1, 2; Appeal Record and Evidence of the Attorney General of Canada [**CR**], Vol 3, Tab 2, Expert Report of Dr. Dominique Blain, affirmed September 27, 2019, at para 22 [**Dr. Blain**].

[2] *Reference re Greenhouse Gas Pollution Pricing Act*, 2019 ONCA 544 at para 58 [**ONCA Reasons**], Alberta's Book of Authorities [**ABBA**], Tab 20.

[3] Appeal Record and Evidence of the Attorney General of Alberta [**ABR**], Vol 8, Affidavit of Robert Savage, sworn August 1, 2019 [**Savage**], Exhibit JJJJ at A2974-75; CR, Vol 3, Tab 2, Dr. Blain at para 22.

Incentive Payments, that address the economic impacts of carbon pricing and his opinions regarding the efficacy of carbon pricing are unsustainable.[4]

PART II – CANADA'S POSITION ON THE QUESTION IN ISSUE

8. Canada's position on the question of whether the *Act* is unconstitutional in whole or in part is set out in Canada's Factum. On the new issues raised, it is Canada's position that the fuel charge under Part 1 of the *Act* is a valid regulatory charge and, as such, s. 53 of the *Constitution Act, 1867* does not apply. In the alternative, if the Court finds that the fuel charge is a tax, it was validly enacted in accordance with s. 53 of the *Constitution Act, 1867.*

PART III – ARGUMENT IN REPLY

A. The *Act* is valid under Parliament's POGG power to address matters of national concern

i. Reply to Saskatchewan on POGG

9. Saskatchewan's argument presents a 'watertight compartments' view of federalism that amounts to saying that inter-jurisdictional immunity applies broadly to every provincial and federal head of power.[5] However, the Supreme Court has long rejected this view of federalism. Inter-jurisdictional immunity has a limited application. The Supreme Court has only ever applied it to protect federal heads of power. In *Canadian Western Bank*, it clarified that, in the absence of impairment of "the 'core' competence of the other level of government (or the vital or essential part of an undertaking it duly constitutes)", inter-jurisdictional immunity does not apply.[6]

10. Saskatchewan's submissions that the risks posed by climate change and the international agreements to address these risks are irrelevant[7] mischaracterize Canada's reliance on these facts and disregard the national concern jurisprudence. The evidence establishing the impacts of *global* climate change and the urgent need to rapidly reduce *global* GHG emissions to avoid significantly

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[4] CR, Vol 4, Tab 5, Expert Report of Dr. Nicholas Rivers, affirmed September 27, 2019, Exhibit B at R1159-1172, Exhibit C at R1185-203, esp R1196-97, R1200-03 [**Dr. Rivers**]; Expert Report of Dr. Nicholas Rivers, affirmed November 13, 2019, at paras 3-15.
[5] Saskatchewan's Factum at paras 2, 3, 4, 9, 27, 42, 78.
[6] *Canadian Western Bank v Alberta*, 2007 SCC 22 at paras 26, 28-30, 33-49, 67 (quote at para 48), [2007] 2 SCR 3 [***Canadian Western Bank***], ABBA, Tab 3.
[7] Saskatchewan's Factum at paras 14-16. Also *contra* Ontario's Factum at paras 25-26, in which it repeats similar arguments.

worsening climate change impacts speaks to the dimensions of the problem, not just its importance. The *United Nations Framework Convention on Climate Change* (*UNFCCC*) and related international agreements similarly evidence the dimensions of the problem. Canada is not relying on the *UNFCCC* or the *Paris Agreement* as a source of expanded federal legislative powers. However, they are relevant to the "international character and implications" of the problem and the definition of the matter of national concern.[8]

11. Saskatchewan (and Ontario) argue that federal jurisdiction over "minimum national standards" is self-fulfilling under the provincial inability test or would empower Parliament to establish minimum national standards in nearly every area of provincial jurisdiction.[9] As Canada already set out in response to Alberta's similar submissions, this disregards the detrimental interprovincial impacts requirement of the provincial inability test.[10]

12. Contrary to Saskatchewan's submissions at paragraphs 33-37 of its Factum, the backstop nature of *establishing minimum national standards integral to reducing nationwide GHG emissions* enhances co-operative federalism. The *Act* is illustrative. The efficacy of carbon pricing is systemically undermined without reasonably comparable levels of stringency throughout Canada. However, rather than applying a federal carbon pricing scheme in every province regardless of existing provincial schemes, the *Act*'s backstop approach facilitates varying provincial approaches to carbon pricing meeting minimum national standards of stringency.

13. At paragraph 55 of its Factum, Saskatchewan submits that "integrality" adds nothing to the definition of the matter of national concern because there cannot be a test of policy effectiveness within the definition of a subject matter. Canada's Factum describes the limits provided by including "integral" in the subject matter.[11] In describing these limits, Canada did not intend to suggest a test of policy effectiveness, but rather an assessment of whether Parliament had a rational

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[8] *R v Crown Zellerbach Canada Ltd*, [1988] 1 SCR 401 at 436-37, ABBA, Tab 15; Peter W Hogg, *Constitutional Law of Canada*, 5th ed (Toronto: Carswell, 2007) (loose-leaf revision 2018-1) at p 11-18, Canada's Book of Authorities [**CBA**], Tab 64; ONCA Reasons at para 106, ABBA, Tab 20; Dale Gibson, "Measuring National Dimensions", (1976) 7 Man LJ 15 at 32-33, CBA, Tab 62.
[9] Saskatchewan's Factum at paras 28-32, 70; Ontario's Factum at paras 31-36.
[10] Canada's Factum at paras 94, 98, 101, 102, 104, 105.
[11] Canada's Factum at paras 77, 78, 109.

basis for considering that the national measure in question is integral to reducing nationwide GHG emissions. Thus, including "integral" in the subject matter definition limits Parliament's jurisdiction to establishing minimum national standards that Parliament has a rational basis to believe will have a demonstrable impact on nationwide GHG emissions. This requires that Parliament must legislate on an evidentiary basis. Here, the evidence referenced in Canada's Factum is the factual foundation relied on by Parliament.[12] It confirms Parliament's rational basis for considering that the *Act* is integral to reducing Canada's nationwide GHG emissions. Canada's point is that any assertion of federal jurisdiction must be assessed against the facts of the case. This does not turn cases into policy debates. It is well established that facts can be essential to constitutional adjudication before the courts.[13]

ii. Reply to Ontario on POGG

14. But for a few points, addressed here, Ontario's arguments are substantively similar to Alberta's and Saskatchewan's submissions. In effect, all three argue that the matter is too broad for Parliament's POGG power. To support this position, Ontario characterizes the pith and substance of the *Act* broadly as the comprehensive "regulation of GHG emissions", without further definition.[14] In so doing, Ontario conflates the *Act*'s purpose with Canada's broader commitment to achieving Canada's nationally determined contribution under the *Paris Agreement*. Ontario extracts one paragraph of the *Act*'s preamble and ignores the remainder.[15] Ontario's characterization also disregards an essential feature of the *Act* – Parliament's "backstop" approach based on a stringency assessment of provincial or territorial systems relative to the Benchmark.[16]

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[12] Canada's Factum at paras 49, 59, 78, 109.

[13] *Provincial Court Judges' Assn of New Brunswick v New Brunswick (Minister of Justice); Ontario Judges' Assn v Ontario (Management Board); Bodner v Alberta; Conférence des juges du Québec v Quebec (Attorney General); Minc v Quebec (Attorney General)*, 2005 SCC 44 at paras 33-37, [2005] 2 SCR 286, CBA, Tab 14; *Reference re Anti-Inflation Act*, [1976] 2 SCR 373 at 422-23, ABBA, Tab 17; Peter W Hogg, *Constitutional Law of Canada*, 5th ed (Toronto: Carswell, 2007) (loose-leaf revision 2018-1) at p 15-23, CBA, Tab 64; Andrew Lokan, Michael Fenrick & Christopher M Dassios, *Constitutional Litigation in Canada* (Toronto: Thomson Reuters, 2006) (loose-leaf revision 2019-1) at 8-10 – 8-12, Canada's Supplemental Book of Authorities [**CSBA**], Tab 11.

[14] Ontario's Factum at paras 7-9.

[15] Ontario's Factum at para 7.

[16] Canada's Factum at paras 26-28, 34-35, 40-41, 47.

15. The federal pricing scheme under the *Act* is secondary; the *Act* could achieve its purposes without the federal scheme operating in any jurisdiction. However, contrary to Ontario's submission,[17] where it does operate, it is patently limited to pricing GHG emissions. The Part 1 fuel charge applies to the fuels listed in Schedule 2, each of which emit GHGs when burned and for which the charge rate is based on its CO_2e emissions factor. The Part 2 output-based pricing system (OBPS) applies to the GHGs listed in Schedule 3 of the *Act*, being the *UNFCCC*-defined GHGs. While the *Act* gives the Governor in Council discretion to prescribe additional substances as a "fuel" for Schedule 2 and to add a "gas… and its global warming potential" to Schedule 3, the *Act*'s purpose, and the *UNFCCC*'s reporting requirements, confines this discretion. All grants of discretionary power are circumscribed by the statutory context in which they arise.[18] The Supreme Court's decision in *Hydro-Québec* supports Canada's position.[19]

16. Ontario proposes that the national concern branch of POGG should be interpreted in light of the Supreme Court's decisions concerning Parliament's general trade and commerce power.[20] Canada agrees that this jurisprudence is relevant, in the manner set out in Canada's Factum.[21] Canada also agrees with Ontario that distinctiveness refers to a qualitative difference.[22] But, unlike Ontario,[23] Canada says that the provincial inability analysis is more than an indicium of distinctiveness; it is the test for distinctiveness. Indeed, Professor Hogg describes provincial inability as "the most important element of national concern".[24] This interpretation, through the application of established principles, aids in circumscribing the scope of the POGG power.

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[17] Ontario's Factum at paras 7, 27.
[18] CR, Vol 1, Tab 1, Affidavit of John Moffet, affirmed September 30, 2019, at para 104 [**Moffet**]; *An Act to mitigate climate change through the pan-Canadian application of pricing mechanisms to a broad set of greenhouse gas emission sources and to make consequential amendments to other Acts*, short title *Greenhouse Gas Pollution Pricing Act*, being Part 5 of the *Budget Implementation Act, 2018, No 1*, SC 2018, c 12, s 186 [***Act***], Alberta's Book of Legislation [**ABBL**], Tab 1, Preamble, ss 3, 166(1), 169, 190, Schedules 2, 3; *Katz Group Canada Inc. v Ontario (Health and Long-Term Care)*, 2013 SCC 64 at paras 24-28, [2013] 3 SCR 810.
[19] Canada's Factum at paras 90-91.
[20] Ontario's Factum at paras 12-24.
[21] Canada's Factum at paras 76, 93-101.
[22] Canada's Factum at para 94.
[23] Ontario's Factum at para 37.
[24] Peter W Hogg, *Constitutional Law of Canada*, 5th ed (Toronto: Carswell, 2007) (loose-leaf revision 2018-1) at pp 17-14, 17-15, CBA, Tab 64.

17. However, Ontario's proposed interpretation of the provincial inability test, as shown by its application of the test, would transform the provincial inability test into a provincial ability test.[25] It ignores the Supreme Court's direction that, when assessing provincial inability, a court should consider the possibility that each province "retain[s] the ability to resile from an interprovincial scheme".[26] Ontario says that "provinces are not incapable of regulating" GHG emissions,[27] but this is not the test. The test asks what would be the effect on extra-provincial interests of a provincial failure to do so. Moreover, Ontario makes its provincial ability submissions in relation to GHG emissions generally, not the more narrowly defined matter to which the *Act* relates.

18. After arguing that "pollution" and the "environment" are not distinct matters, which is not in dispute, Ontario points to the aeronautics and radio communications decisions as examples of the "sweeping" consequences of recognizing a matter of national concern.[28] These decisions do not demonstrate that POGG powers are *necessarily* "sweeping". Instead, they are examples of inter-jurisdictional immunity for, or direct conflict with, POGG powers that were initially assigned broad cores. The location of aerodromes falls within the core of the federal power over aeronautics.[29] Provincial legislation that impairs that core remains valid, but is inapplicable due to inter-jurisdictional immunity where it significantly restricts that core,[30] or is invalid when its pith and substance is the regulation of aeronautics because it specifically seeks to prevent the creation of aerodromes.[31] In *Rogers*, the notice of a reserve in question was invalid because its pith and substance was the choice of location of radiocommunication infrastructure,[32] and inapplicable because "the notice of a reserve compromised the orderly development and efficient operation of

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[25] Ontario's Factum at paras 20-24, 37-43.
[26] *Reference re Securities Act*, 2011 SCC 66 at para 119, [2011] 3 SCR 837 [***Securities Reference***], ABBA, Tab 25; *Reference re Pan-Canadian Securities Regulation*, 2018 SCC 48 at para 113, [2018] 3 SCR 189, ABBA, Tab 23.
[27] Ontario's Factum at para 37-41; also *contra* Saskatchewan's Factum at para 68.
[28] Ontario's Factum at paras 27-30.
[29] *Johannesson v Rural Municipality of West St Paul*, [1952] 1 SCR 292 at 318-19, ABBA, Tab 5; *Quebec (AG) v Canadian Owners and Pilots Association*, 2010 SCC 39 at para 37, [2010] 2 SCR 536 [***COPA***], Ontario's Book of Authorities [**ONBA**], Tab 6.
[30] *COPA* at paras 37, 48-60, ONBA, Tab 6.
[31] *Quebec (AG) v Lacombe*, 2010 SCC 38 at paras 20-30, [2010] 2 SCR 453, ABBA, Tab 11.
[32] *Rogers Communications v Châteauguay (City)*, 2016 SCC 23 at paras 42-46, [2016] 1 SCR 467 [***Rogers***], ABBA, Tab 27.

radiocommunication and impaired the core of the federal power over radiocommunication".[33] The POGG powers over aeronautics and radio communication are unique, initially arising under Parliament's treaty power. They do not demonstrate that POGG powers are necessarily sweeping.

19. Ontario concludes its Factum by making submissions on whether the *Act* is validly enacted under the emergency branch of Parliament's POGG power, Parliament's criminal law power, or other existing heads of power, as argued by various Intervenors. While Canada has not advanced these arguments, Canada notes that the reference question broadly asks whether the *Act* is constitutional in whole or in part. As such, it is fully open to this Court to consider the emergency branch of POGG or the other heads of power advanced by various Intervenors in providing its opinion on the reference question.

iii. Reply to New Brunswick on POGG

20. New Brunswick's submissions advance the same principles as Alberta, Saskatchewan, and Ontario who, as New Brunswick acknowledges, "cover the field".[34] Thus, Canada makes only two additional points in response.

21. First, New Brunswick's suggestion that "sentiments of global gravitas, existential threat and enormity of circumstance" should be set aside is flawed.[35] These points speak directly to the interprovincial and international dimensions of the problem. That evidence, combined with the fact that GHG emissions have been "generated unmanageably since the Industrial Revolution",[36] and the resulting global impacts, is the analogue to marine pollution that New Brunswick seeks.[37]

22. Second, New Brunswick's caution against relying on the living tree doctrine is also flawed. While Canada agrees that the living tree doctrine is not a tool to "constitutionalize a specific policy option",[38] this is not what Canada seeks to do. The "metaphor has endured as the preferred approach

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[33] *Rogers* at paras 63-72 (quote at para 71), ABBA, Tab 27.
[34] New Brunswick's Factum at para 13.
[35] New Brunswick's Factum at paras 2, 28.
[36] New Brunswick's Factum at para 28.
[37] *Contra* New Brunswick's Factum at paras 32, 39-50.
[38] *R v Comeau*, 2018 SCC 15 at para 83, [2018] 1 SCR 342, ABBA, Tab 14, as cited in New Brunswick's Factum at para 57.

in constitutional interpretation, ensuring 'that Confederation can be adapted to new social realities'".[39] Recognizing Parliament's POGG jurisdiction to enact minimum national standards integral to reducing nationwide GHG emissions fills a gap in the Constitution. Without it, we would be a country incapable of enforcing the measures necessary to address an existential threat.

iv. Reply to SaskEnergy/SaskPower on POGG

23. SaskEnergy/SaskPower's submissions that the *Act* does not come within Parliament's POGG power because it encroaches on provincial powers under s. 92A fails for two reasons.[40] First, the *Act*'s pith and substance is not "in relation to" electricity generation. "The 'pith and substance' doctrine is founded on the recognition that it is in practice impossible for a legislature to exercise its jurisdiction over a matter effectively without incidentally affecting matters within the jurisdiction of another level of government."[41] Federal legislation may validly affect local matters without being unconstitutional.[42]

24. Second, SaskEnergy/SaskPower's submissions that the *Act* impacts the "core" of their operations is an inter-jurisdictional immunity argument,[43] which is about the applicability of the *Act*, not its validity. The reference question before this Court asks about the constitutional validity of the *Act*. "The interjurisdictional immunity analysis presumes the validity of a law".[44] Thus, as the entire Court of Appeal for Saskatchewan (SKCA) found, SaskEnergy/SaskPower's inter-jurisdictional immunity arguments are beyond the scope of the reference question.[45]

B. The charges under the *Act* are valid regulatory charges tied to the scheme of the *Act*

25. Contrary to the position of Saskatchewan and the CTF, the charges imposed by the *Act* are valid regulatory charges under the *Westbank* analysis. The *Westbank* test for determining whether

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[39] *Securities Reference* at para 56, ABBA, Tab 25. See *Reference re Greenhouse Gas Pollution Pricing Act*, 2019 SKCA 40 at para 144 [**SKCA Reasons**], ABBA, Tab 21.
[40] SaskEnergy/SaskPower's Factum at paras 1, 7-12, 41-49
[41] *Canadian Western Bank* at para 29, ABBA, Tab 3.
[42] *Canadian Western Bank* at para 28, ABBA, Tab 3.
[43] SaskEnergy/SaskPower's Factum at paras 1, 13, 17-29, 36-37.
[44] *COPA* at para 57, ONBA, Tab 6; *Rogers* at para 35, ABBA, Tab 27.
[45] SKCA Reasons at paras 205-09, 344, ABBA, Tab 21. The same point applies to SaskEnergy/SaskPower's submissions about s. 125 of the *Constitution Act, 1867* (SaskEnergy/SaskPower's Factum at paras 30-34).

a charge is connected to a regulatory scheme involves two steps: (1) determining whether a relevant regulatory scheme exists; and (2) establishing a relationship between the charge and the scheme.[46]

26. In its decision in *620 Connaught*, the Supreme Court also laid out a series of principles for determining whether a government levy is a tax or a regulatory charge. "[T]he *primary purpose* of the law… is determinative",[47] and the character of the law is determined by "its dominant or most important characteristic".[48] If a levy is imposed primarily for a regulatory purpose, or as necessarily incidental to a broader regulatory scheme, it will be a regulatory charge.[49] The fuel charge and the excess emissions charge imposed by the *Act* are valid regulatory charges because their dominant purpose is to modify behaviour.[50]

i. A relevant regulatory regime exists

27. The *Act* creates a regulatory scheme.[51] A regulatory scheme will be found to exist where some or all of the following indicia are present: (1) a complete, complex, and detailed code of regulation; (2) a regulatory purpose which seeks to affect some behaviour; (3) the presence of actual or properly estimated costs of the regulation; and (4) a relationship between the person being regulated and the regulation, where the person being regulated either benefits from, or causes the need for, the regulation. Not all of these indicia need to be present to find that a regulatory scheme exists.[52] Both the SKCA and the Court of Appeal for Ontario (ONCA) majorities found that the *Act* is a valid regulatory scheme.[53]

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[46] *Westbank First Nation v British Columbia Hydro and Power Authority*, [1999] 3 SCR 134 at paras 30, 43 [***Westbank***], Saskatchewan's Book of Authorities [**SKBA**], Tab 21.
[47] *620 Connaught Ltd. v Canada (AG)*, 2008 SCC 7 at para 17 (emphasis in original), [2008] 1 SCR 131 [***620 Connaught***], SKBA, Tab 1.
[48] *620 Connaught* at para 16, SKBA, Tab 1.
[49] *620 Connaught* at para 24, SKBA, Tab 1; see also: *Westbank* at paras 30, 43, SKBA, Tab 21; *Re: Exported Natural Gas Tax*, [1982] 1 SCR 1004 at 1070 [***Exported Natural Gas***], Canadian Taxpayers Federation's Book of Authorities [**CTFBA**], Tab 4.
[50] *Westbank* at paras 23-24, 32, 44, SKBA, Tab 21; *Exported Natural Gas* at 1070, CTFBA, Tab 4.
[51] *Contra* each of CTF's Factum at paras 23-37, Saskatchewan's Factum at paras 81-82, and SaskEnergy/SaskPower's Factum at para 36.
[52] *Westbank* at para 44, SKBA, Tab 21; *620 Connaught* at paras 24-28, SKBA, Tab 1.
[53] SKCA Reasons, paras 88, 95, ABBA, Tab 21; ONCA Reasons, para 163, ABBA, Tab 20.

28. The federal GHG emissions pricing system, including both the *Act* and the regulations, constitute a complete, complex, and detailed code of regulation that meets the first criterion. The SKCA majority agreed that both the fuel charge in Part 1 and the OBPS in Part 2, including the excess emissions charge, are complementary components of a single scheme intended to encourage behavioural change, through a price signal, to reduce GHG emissions.[54] While both Parts serve to further a single comprehensive code of federal environmental regulation, the *Act* is structured so that where a province has either a sufficiently stringent carbon pricing or industrial pricing system in place, Parts 1 or 2 may not apply, as the case may be.

29. As noted by the SKCA, the first indicium is present as Part 1 (a) identifies the fuel subject to the charge; (b) specifies the amount of the charge with a view to influencing decisions bearing on GHG emissions; (c) sets out very specific rules about the application of the charge in various circumstances; (d) lays down specific rules with respect to certain inter-jurisdictional air, marine, rail, and road carriers; (e) specifies reports, returns, and payments; and (f) more generally provides for the administration and enforcement of the scheme.[55] Similarly, the SKCA found the first indicium present in Part 2.[56]

30. Contrary to the arguments of the CTF, the *Act* is not similar to the tax considered by the Supreme Court in *Re Exported Natural Gas Tax*, where the legislation in that case, in pith and substance, was found to be taxation.[57] The Supreme Court made this finding because the legislation in *Re Exported Natural Gas Tax* added nothing to the existing structure of gas regulation, save revenue.[58] In contrast, the *Act* clearly does not have the generation of revenue as its purpose.[59] As noted by the SKCA majority, "[i]t is difficult to see how the *Act*, which is ultimately wholly disinterested in generating revenue, can nonetheless be seen as a law with a primary purpose of raising revenue for general purposes."[60] The SKCA majority noted that the *Act* requires that

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[54] SKCA Reasons, paras 80, 91, ABBA, Tab 21; CR, Vol 1, Moffet at paras 116-31; ABR, Vol 7, Savage, Exhibit CCCC at A2619.
[55] SKCA Reasons at para 80, ABBA, Tab 21.
[56] SKCA Reasons at para 91, ABBA, Tab 21.
[57] CTF Factum at para 26.
[58] *Exported Natural Gas* at 1077, CTFBA, Tab 4.
[59] *Act*, Preamble, ABBL, Tab 1.
[60] SKCA Reasons at para 87, ABBA, Tab 21.

revenues be returned to the provinces and not to the general revenue fund. Moreover, the *Act* could accomplish its objectives completely without raising any revenue should every province put in place an acceptable level of GHG emissions pricing.[61]

31. The second indicium, the presence of a regulatory purpose that seeks to affect behaviour, is decidedly met in the present case. The SKCA majority considered this to be "readily apparent" (in respect of Part 1) and "beyond dispute" (in respect of Part 2).[62] The CTF's submission that this indicium is not met is premised on a misunderstanding of the structure of the *Act* and of the current economic understanding of carbon pricing.[63] As noted, the *Act* is not aimed at revenue-generation.[64] Parliament clearly expressed that the intent of the legislation is to correct a market failure by putting a price on GHG emissions to encourage customers and industry to adopt emissions-reducing behaviour and to encourage innovation in low-emissions technologies.[65] The legislation achieves this by creating a financial incentive for businesses and individuals to change their behaviour in ways that reduce consumption, result in more efficient energy use, and create incentives for the development of more affordable green technologies. The result will be lower GHG emissions.[66]

32. Contrary to Saskatchewan's submissions, the third indicium is not relevant in this case.[67] That there will be regulatory costs incurred in the operation of the federal scheme is self-evident. However, since the charges are not imposed to defray the costs of the scheme, but as the catalyst for behavioural change, focusing on actual or estimated regulatory costs does not assist in determining the existence of a regulatory scheme.[68]

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[61] *Act*, s 165(2), ABBL, Tab 1; SKCA Reasons at paras 85-87, ABBA, Tab 21.
[62] SKCA Reasons at paras 81, 92, ABBA, Tab 21.
[63] CTF's Factum at para 30.
[64] *Act*, s 165, 188, ABBL, Tab 1.
[65] *Act*, Preamble, paras 10-15, ABBL, Tab 1; Canada's Factum at paras 40-49.
[66] CR, Vols 1, 3, Tab 1, Moffet at paras 142, 144, Exhibit DD; CR, Vol 4, Tab 3, Affidavit of Warren Goodlet affirmed September 27, 2019 [**Goodlet**] at paras 17-18, 24 and 26-28; CR, Vol 4, Tab 5, Dr. Rivers, Exhibit "B" at R1145-77.
[67] Saskatchewan's Factum at para 82.
[68] *Westbank* at paras 24, 44, SKBA, Tab 21; *620 Connaught* at para 20, SKBA, Tab 1; *Canadian Association of Broadcasters v Canada*, 2008 FCA 157 at para 53, leave to appeal granted, [2008]

33. The fourth indicium requires a relationship between the regulatory scheme and the persons being regulated in that those persons either benefit from the regulation or cause the need for it. The necessary relationship is present in both Parts. The *Act* directly targets the production, delivery, and use of certain fuels and requires the registration of those involved in these activities. The need to regulate GHG emissions is caused *both* by the producers and importers of GHG-emitting fuels and by consumers whose use of them drives demand and contributes to GHG emissions. While the fuel charge is not imposed directly on end-use consumers, the expectation is that it will be passed on to them in the form of a higher price for the fuel they purchase which serves as a financial incentive for them to consume less.[69] This connection is sufficient to establish the relationship.

34. The CTF claims that the fact that those who pay the charge receive no benefit is a further indication that the fourth indicium is not met.[70] Their position misunderstands the nature of this indicium. The test asks whether those being regulated either benefit from the *Act* or *have caused the need for it*. The production, delivery, and use of fossil fuels produce emissions that lead to climate change, and thus cause the need for the regulation. The regulation in turn is aimed at reducing GHG emissions in order to reduce the harmful impacts of climate change, which in turn will confer significant benefits on everyone. Together, Parts 1 and 2 of the *Act* thus qualify as a regulatory scheme.

ii. The nexus exists between the charges and the scheme

35. After establishing that a valid regulatory scheme exists, the second step is to determine if there is a relationship or nexus between the charges and the overall scheme. This relationship exists in either of two situations: where "the revenues are tied to the cost of the scheme", or where the charge itself has "a regulatory purpose of influencing the behaviour of the persons concerned."[71] In

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3 SCR x, appeal discontinued October 7, 2009 [***Canadian Broadcasters***], CSBA, Tab 2. Also see SKCA Reasons at paras 82, 93, ABBA, Tab 21.

[69] CR, Vol 4, Tab 5, Dr. Rivers, Exhibit "B" at R1148-58; SKCA Reasons at paras 83, 94, ABBA, Tab 21.

[70] CTF Factum at para 34.

[71] *620 Connaught* at paras 20, 27, SKBA, Tab 1; *Canadian Broadcasters* at paras 44, 53, CSBA, Tab 2.

Westbank, the Supreme Court explained that charges that "proscribe, prohibit, or lend preferences to certain conduct with the view of changing individual behaviour" are regulatory charges.[72]

36. The CTF mischaracterizes the *Westbank* test when it argues that the *Act* fails to meet the test because the charge is not intended as a user fee or to defray costs.[73] This requirement is not part of the nexus test for behaviour-changing regulatory charges. As the ONCA majority ultimately held, "regulatory charges need not reflect the cost of administration of the scheme."[74]

37. The charges in the *Act* are behaviour-changing regulatory charges. Significant evidence shows that pricing carbon pollution is an effective regulatory means to promote the behavioural changes and innovation needed to reduce GHG emissions throughout Canada. The convergent evidence that carbon pricing reduces emissions,[75] the international consensus that carbon pricing is an essential measure to achieve the necessary global reductions in GHG emissions,[76] the extensive work done by the Working Group on Carbon Pricing Mechanisms, and the Pan-Canadian Framework[77] are all important aspects of the background and circumstances surrounding the *Act's* enactment. Parliament was fully informed of the evidence supporting the behaviour-changing efficacy of GHG emissions pricing when enacting the *Act*. The repeated references to the efficacy of economy-wide GHG emissions pricing as the most efficient way to encourage behavioural changes to reduce emissions – in the pan-Canadian approach to carbon pricing, in the Parliamentary legislative record, and in the preamble to the *Act* itself[78] – all speak to how the fuel charge and excess emissions charge are linked to the regulatory objective. In short, the charges themselves have the regulatory purpose of influencing behaviour.

38. No case requires the use of revenues raised by a regulatory charge be tied to the purpose of the *Act*. Courts have specifically considered a charge with a regulatory purpose of influencing behaviour in only a few cases, but none has demanded that revenues generated by a charge be used

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[72] *Westbank* at paras 29, 44, SKBA, Tab 21.
[73] CTF Factum, para 35.
[74] ONCA Reasons at para 159, ABBA, Tab 20.
[75] CR, Vol 4, Tab 5, Dr. Rivers at para 6, Exhibit B.
[76] CR, Vol 1, Tab 1, Moffet at paras 54-58; Canada's Factum at paras 20-22.
[77] CR, Vol 1, Tab 1, Moffet at paras 64-79, 90-102; CR, Vol 4, Tab 3, Goodlet at paras 14-20; Canada's Factum at paras 24-25, 30-32.
[78] *Act*, Preamble, para 12, ABBL, Tab 1; Canada's Factum at paras 26-35, 37-39, 49-50.

for a specific regulatory purpose. In *Westbank*, Gonthier J. expressly held that the connection required by the second *Westbank* factor will exist "where the charges themselves have a regulatory purpose, such as the regulation of certain behaviour."[79] *Johnnie Walker* suggests a similar result. In that case, British Columbia claimed the province was exempt from paying customs duties under s. 125 of the *Constitution Act, 1867*. The Supreme Court found that the federal customs duties in issue had elements of both taxation and regulation, with the regulatory element predominating. As described in *Westbank*, the Supreme Court in *Johnnie Walker* explained,

> ... that customs duties were the method of advancing the regulatory purpose of encouraging the importation of certain products, and discouraging the importation of others. Anglin J., at p. 387, explained that customs duties "are, it seems to me, something more" than simple taxation.[80]

39. The conclusion drawn from *Johnnie Walker* is that customs duties, because their primary purpose is the regulation of trade and commerce under s. 91(2) of the *Constitution Act, 1867*, are properly characterized as regulatory charges. Thus, the "fiscal immunity of the provincial Crown could not prevail".[81] Neither *Johnnie Walker* nor any later case has stated that the use of revenues from customs duties cannot be used for general federal purposes (which they are) but must instead be dedicated exclusively to the regulatory purpose animating them. As noted by Strathy C.J.O., the reasoning of the Federal Court of Appeal in *Canadian Broadcasters*,[82] which rejected the notion that fees must be tied to the costs of the scheme, is to be preferred. Indeed, requiring a connection between the level of a charge and the costs of the scheme would be incompatible with the function and design of a behaviour modification charge; to be effective, its rate must be set at the level that will produce the desired effect of modifying behaviour, irrespective of the cost of the scheme or other factors.

40. Moreover, requiring that the government spend the revenues from the behavioural changing charges under the *Act* on the singular objective of reducing GHG emissions would be an unwarranted constraint. Parliament's overarching objective is to reduce GHG emissions, which

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[79] *Westbank* at para 44, SKBA, Tab 21; ONCA Reasons, paras 151-159, ABBA, Tab 20; *Canadian Broadcasters* at paras 42-43, 57 CSBA, Tab 2.
[80] *Westbank* at para 29, SKBA, Tab 21; *British Columbia (AG) v Canada (AG)* (1922), 64 SCR 377 at 387 [***Johnnie Walker***], CSBA, Tab 1, aff'd [1923] 4 DLR 669 (JCPC).
[81] *Exported Natural Gas* at 1069, CTFBA, Tab 4.
[82] *Canadian Broadcasters*, CSBA, Tab 2; ONCA Reasons at paras 155-59.

Parliament is pursuing through GHG emissions pricing under the *Act*. Emissions pricing is a distinct approach from dedicated spending in furtherance of emissions reductions. Revenue generation is an effect of pricing GHG emissions but, contrary to the submissions of the CTF, it is not the reason for it. Given the amount of revenue that is collected under the *Act*, and given that the level of the charges may increase over time (to $50 per tonne of CO2e by 2022), the Court should refrain from holding that all the revenues must be dedicated to environmental purposes linked to the regulatory regime. Conversely, economic efficiency is retained by maintaining fiscal flexibility to make spending decisions to address the impact of GHG emissions pricing, such as through the Climate Action Incentive Payments.[83]

41. It is neither necessary from a legal perspective, nor appropriate from an economic or fiscal perspective, for the revenues derived under the *Act* to be dedicated exclusively to GHG emissions reduction purposes. The requisite relationship between the charges imposed by the *Act* and its regulatory scheme exists by reason of the charges' regulatory purpose. They therefore satisfy the test as valid regulatory charges, and are not taxes.

C. If this Court concludes that Part 1 imposes a tax, it meets the requirements of s. 53 of the *Constitution Act, 1867*

i. The requirements of s. 53 are met

42. Canada has never taken the position that the charges imposed under the *Act* are properly characterized as taxes in a constitutional sense. As they are regulatory charges,[84] there is no need to meet the requirements of s. 53 of the *Constitution*. However, if this Court were to conclude that the fuel charge is a tax rather than a regulatory charge, its enactment meets the formal requirements of s. 53 of the *Constitution Act, 1867*.[85]

43. It is open to this court to find that Part 1 of the *Act* imposes a tax despite Canada's stated legislative objective. In *Eurig Estate*, Ontario imposed probate fees under the regulations to the

[83] CR Vol 4, Tab 5, Dr. Rivers at para 8, Exhibit C; CR, Vols 1, 2, Tab 1, Moffet at paras 165-73, Exhibit T at R736-39; ABR, Vol 7, Savage, Exhibit CCCC at A2634, A2638-42.
[84] ONCA Reasons at paras 150-163, ABBA, Tab 20; SKCA Reasons at paras 78-97, ABBA, Tab 21.
[85] SKCA Reasons at paras 98-111, ABBA, Tab 21.

Administration of Justice Act, which the Supreme Court found to be taxes. In *Westbank*, Westbank First Nation applied its assessment and taxation bylaws to BC Hydro, which the Supreme Court found to be taxes. If the fuel charge is not a regulatory charge, then it is a tax.[86]

44. Contrary to the arguments of Saskatchewan and the CTF, the *Act* complies with both the formal requirements of s. 53 of the *Constitution Act, 1867* and the underlying constitutional principle of ensuring parliamentary control over, and accountability for, taxation.[87] In terms of the formal requirements, the *Act* originated in the House of Commons, and on March 27, 2018, the Minister of Finance presented a Notice of Ways and Means Motion to the House of Commons, to implement certain provisions of the budget. The motion carried, and the Minister of Finance moved for leave to introduce Bill C-74, a budget implementation bill, Part 5 of which would later become the *Act*. The House of Commons both debated the Bill and examined it in committee.[88]

45. Nor is the principle of parliamentary control and accountability violated. The essential features of the charges are not delegated, and the delegation respecting the schedules is clear and unambiguous. While Saskatchewan and the CTF argue that the *Act* impermissibly delegates more than the details and mechanisms of the 'tax', the SKCA majority disagreed on this point and did not find that the delegation in the *Act* was constitutionally problematic.[89] The fuel charge does not arise, even incidentally, in any delegated legislation. The fuel charge is imposed in the *Act*.[90] The *Act* is applicable in all provinces, and it establishes a method for determining in which jurisdictions the federal fuel charge and OBPS system will operate.[91] The details of the federal fuel charge are expressly set out in the *Act*: it is computed under the *Act* for time periods that are established by the *Act*. The amount of the charge is set by the *Act* and the Governor in Council's authority to determine the rate is expressly delegated in s. 166(4). If the Court finds that the fuel charge is a tax, there is

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[86] Ontario's Factum, paras 94-101; *Eurig Estate (Re)*, [1998] 2 SCR 565, CTFBA, Tab 5; *Westbank*, SKBA, Tab 21; *Canadian Western Bank* at paras 28, 45, ABBA, Tab 3.
[87] Saskatchewan's Factum at paras 90-93; CTF Factum at paras 40-41.
[88] *House of Commons Debates*, 42-1 No 276 (27 March 2018) at 18164-66, CSBA, Tab 10; Audrey O'Brien & Marc Bosc, *House of Commons Procedure and Practice*, 2d ed (Ottawa: House of Commons, 2009) at 901-04 ("The Legislative Phase"), CSBA, Tab 12.
[89] SKCA Reasons at paras 103-08, ABBA, Tab 21.
[90] *Act*, ss 17-41, ABBL, Tab 1; see also: *National Steel Car Limited v Independent Electricity System Operator*, 2018 ONSC 3845 at paras 85-87, CSBA, Tab 5.
[91] *Act*, Part I, Division 2, ABBL, Tab 1.

no delegation problem. It was validly enacted in accordance with s. 53 of the *Constitution Act, 1867*.[92]

46. In *Ontario English Catholic Teachers' Assn*, the Supreme Court held that "[t]he delegation of the imposition of a tax is constitutional if express and unambiguous language is used in making the delegation." The Supreme Court further explained:

> When the Minister sets the applicable rates, a tax is not imposed *ab initio*, but it is imposed pursuant to a specific legislative grant of authority. Furthermore, the delegation of the setting of the rate takes place within a detailed statutory framework, setting out the structure of the tax, the tax base, and the principles for its imposition.[93]

47. Parliament expressly delegated authority to the Governor in Council to determine the jurisdictions in which Parts 1 and 2 of the *Act* operate, and defined the scope of that delegation. The *Act* requires the Governor in Council to consider the stringency of provincial GHG emissions pricing mechanisms as "the primary factor" in making a decision.[94] The exercise of that statutory power is subject to administrative law and is supervised by the Federal Court. In exercising this discretion, the Governor in Council is not imposing a tax *ab initio*, or on its own accord. Parliament has directed the mechanisms by which it is decided where the fuel charge and OBPS systems will operate and in what circumstances. Provincial legislatures are also free to enact legislation that would prevent the operation of Parts I and 2 of the *Act* within their jurisdictions.

48. Moreover, there are no rule of law concerns at play and no issues of democratic accountability. Parliamentarians debated the meaning and scope of the Governor in Council's discretion in ss. 166(3) and 189(2). Amendments were proposed and passed during the legislative process in order to expressly limit the scope of discretion.[95] The discretion Parliament granted under the *Act* is defined, explicitly related to the objectives of the *Act*, and constitutionally valid.[96]

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[92] *Act*, ss 3 "rate", 17-41, 68, 69, 71, Schedule 2, column 5, ABBL, Tab 1.
[93] *Ontario English Catholic Teachers' Assn v Ontario (Attorney General)*, 2001 SCC 15 at paras 74, 75, 77, [2001] 1 SCR 470 [***OECTA***], CTFBA, Tab 2.
[94] *Act*, s 166(3); House of Commons, Standing Committee on Finance, *Evidence*, 42-1 [**FINA**], No 157 (23 May 2018) at 12-14, CBA, Tab 39.
[95] FINA, No 157 (23 May 2018) at 12-13, CBA, Tab 39.
[96] *OECTA* at paras 71, 73, 75, CTFBA, Tab 2; *Act*, ss 166(2), 166(3), 189(1), 189(2), ABBL, Tab 1; FINA, No 157 (23 May 2018) at 12-14, CBA, Tab 39.

49. Saskatchewan claims that s. 168(4) of the *Act* offends the rule that in the event of a conflict between a statute and a regulation enacted pursuant to that statute, the statute prevails.[97] The constitutional capacity of legislative bodies to confer this type of power to the delegated authority was recognized in the case of *Re Gray*, which upheld the war measure powers of the Dominion government during World War I.[98] In any event, even if this Court were of the opinion that s. 168(4) is problematic, it would not impugn the entire *Act*.

ii. There is no requirement of federal uniformity of laws

50. Finally, contrary to Saskatchewan's submissions and the minority decision in the SKCA, there is insufficient legal support to recognize a "principle of uniformity of taxation" as a principle of federalism.[99] On this point, the Supreme Court has never wavered: "[a]s a matter of legislative power only, there can be no doubt about Parliament's right to give its criminal or other enactments special applications, whether in terms of locality of operation or otherwise. This has been recognized from the earliest years of this Court's existence".[100]

51. The SKCA minority would recognize a principle of tax uniformity based on *Minister of Finance v Smith*.[101] That case raised the question of whether profits arising from the sale of liquor contrary to provincial law were considered income under federal law, and thus subject to taxation. In *Smith*, their Lordships were required to decide the intention of those who drafted the *Income Tax War Act, 1917*, SC 1917, c 28, to determine how it affected income that was illegally obtained under *The Ontario Temperance Act*, SO 1916, c 50.

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[97] Saskatchewan's Factum at paras 93-94.
[98] *In Re George Edwin Gray* (1918), 57 SCR 150 at 156-59 per Fitzpatrick CJC, 166-70 per Duff J, and 175-83 per Anglin J, CSBA, Tab 3. See also: *Waddell v Canada (Governor in Council)* (1983), 49 BCLR 305, 5 DLR (4th) 254 at para 25 (CanLII), CSBA, Tab 9; *Re Land Registry Act and Vancouver* (1956), 5 DLR (2d) 512 at 522-23, CSBA, Tab 8.
[99] Saskatchewan's Factum at paras 84-86; SKCA Reasons at paras 374-386.
[100] Peter Hogg, *Constitutional Law of Canada*, 5th ed (Toronto: Carswell, 2007) (loose-leaf revision 2018-1) at p 17-13; *R v Burnshine*, [1975] 1 SCR 693 at 715, CSBA, Tab 6; *Fredericton (City of) v The Queen* (1880), 3 SCR 505 at 529-30. In the *Charter* context, see: *R v S(S)*, [1990] 2 SCR 254 at 289-290, CSBA, Tab 7; *Haig v Canada*, [1993] 2 SCR 995 at 1046-1047.
[101] [1926] 3 DLR 709 (PC) [***Smith***], CSBA, Tab 4.

52. In engaging in that exercise, their Lordships noted that they could find no valid reason to hold that the language in that Act intended to exclude income that was illicit according to some provincial laws that would be legal in other jurisdictions. If such language had been found in the legislation, the result in *Smith* may have been entirely different, notwithstanding their Lordships' statement that "it is natural that the intention was to tax on the same principle throughout the whole of Canada." The passage from *Smith* quoted in the SKCA minority reasons to support its conclusion is an exercise in statutory interpretation, not the birth of a new principle of federalism requiring uniformity of taxation.[102]

53. In any event, all of the provinces are subject to the legislation at all times, whether or not they become a listed province. The *Act* does apply to the provinces uniformly. The backstop mechanism allows for *substantively* fair and equal treatment of the provinces, while ensuring sufficiently stringent carbon pricing regimes throughout Canada.

PART IV – ORDER SOUGHT

54. Canada seeks the order set out in Canada's Factum. In the alternative, Canada seeks the Court's opinion that Part 1 of the *Act* is enacted under Parliament's taxation power and Part 2 of the *Act* is validly enacted under Parliament's POGG power to pass laws respecting the establishment of minimum national standards integral to reducing nationwide GHG emissions, being a matter of national concern.

55. As a further alternative, Canada seeks the Court's opinion that the entire *Act* is validly enacted under the emergency branch of Parliament's POGG power, Parliament's criminal law power, or other existing heads of power, as argued by various Intervenors.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated this 22nd day of November, 2019.

Sharlene Telles-Langdon for **Christine Mohr**

[102] SKCA Reasons at para 378, ABBA, Tab 21.

for **Mary Matthews**

Neil Goodridge

for **Ned Djordjevic**

Beth Tait
Of Counsel for the Attorney General of Canada

PART V – TABLE OF AUTHORITIES

Found in	At Tab	Case Law	Cited at Para
SKBA	1	*620 Connaught Ltd. v Canada (AG)*, 2008 SCC 7, [2008] 1 SCR 131	26, 27, 32, 34
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CTFBA	4	*Re: Exported Natural Gas Tax*, [1982] 1 SCR 1004	26, 30, 39
ABBA	17	*Reference re Anti-Inflation Act*, [1976] 2 SCR 373	13
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ABBA	21	*Reference re Greenhouse Gas Pollution Pricing Act*, 2019 SKCA 40	22, 24, 27, 28, 29, 30, 31, 32, 33, 45, 50, 52
ABBA	23	*Reference re Pan-Canadian Securities Regulation*, 2018 SCC 48, [2018] 3 SCR 189	17
ABBA	25	*Reference re Securities Act*, 2011 SCC 66, [2011] 3 SCR 837	22
ABBA	27	*Rogers Communications v Châteauguay (City)*, 2016 SCC 23 [2016] 1 SCR 467	18, 24

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CSBA	9	*Waddell v Canada (Governor in Council)* (1983), 49 BCLR 305, 5 DLR (4th) 254	49
SKBA	21	*Westbank First Nation v British Columbia Hydro and Power Authority*, [1999] 3 SCR 134	3, 25, 26, 27, 32, 35, 36, 38, 43

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ABBL	1	*Greenhouse Gas Pollution Pricing Act*, SC 2018, c 12, s 186	*Loi sur la tarification de la pollution causée par les gaz à effet de serre*, LC 2018, ch 12, art 186	15, 30, 31, 37, 45, 47, 48

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