Court File Nos.: 38663 and 38781

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)

IN THE MATTER OF THE *GREENHOUSE GAS POLLUTION PRICING ACT*, SC 2018, c. 12, s. 186

AND IN THE MATTER OF A REFERENCE BY THE LIEUTENANT GOVERNOR IN COUNCIL TO THE COURT OF APPEAL FOR ONTARIO UNDER THE *COURTS OF JUSTICE ACT*, RSO 1990, c. C.43, s. 8

BETWEEN:

ATTORNEY GENERAL OF ONTARIO

Appellant

- and -

ATTORNEY GENERAL OF CANADA

Respondent

- and -

ATTORNEY GENERAL OF SASKATCHEWAN, ATTORNEY GENERAL OF ALBERTA, ATTORNEY GENERAL OF BRITISH COLUMBIA, ATTORNEY GENERAL OF MANITOBA,ATTORNEY GENERAL OF NEW BRUNSWICK, ATTORNEY GENERAL OF QUEBEC

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(Title of proceedings continued on next page)

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AND :

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM COURT OF APPEAL FOR SASKATCHEWAN)

IN THE MATTER OF THE *GREENHOUSE GAS POLLUTION PRICING ACT*, SC 2018, c. 12, s. 186

AND IN THE MATTER OF A REFERENCE BY THE LIEUTENANT GOVERNOR IN COUNCIL TO THE COURT OF APPEAL FOR SASKATCHEWAN UNDER THE *CONSTITUTIONAL QUESTIONS ACT*, 2012, SS 2012, c. C-29.01

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PART I – OVERVIEW AND FACTS

1. The Attorney General of Canada (Canada) submits this reply factum in response to new issues raised in the factums of the Attorneys General of Quebec, Alberta, New Brunswick, and Manitoba, SaskEnergy Incorporated and Saskatchewan Power Incorporated (SaskEnergy/SaskPower), and the Canadian Taxpayers Federation (CTF).

2. In reply to Quebec, the *Greenhouse Gas Pollution Pricing Act* (*Act*) can co-exist harmoniously with Quebec's cap-and-trade system. Upholding the majority decisions of the Saskatchewan (SKCA) and Ontario (ONCA) Courts of Appeal does not jeopardize its validity and there is no evidence the annual stringency assessment process undermines its viability or efficacy.

3. Contrary to New Brunswick's submissions, both the SKCA and the ONCA majority decisions undertook analytically distinct characterization and classification analyses.

4. Manitoba is wrong that the *Act* must mandate that provinces have precisely uniform carbon pricing systems to be characterized as *ensuring minimum national standards integral to reducing nationwide greenhouse gas (GHG) emissions* or to meet the *Act's* national objectives. In the context of carbon pricing, it is sufficient if provincial systems are comparably stringent, based on the Benchmark.

5. Alberta's submissions rely on a vague characterization of the *Act*, without any pith and substance analysis, and inaccurate representations of the factual record in Alberta's Reference to its Court of Appeal. SaskEnergy/SaskPower erroneously characterize the *Act* - its dominant purpose is not in relation to provincial powers under s. 92A of the *Constitution Act, 1867*.

6. The CTF incorrectly asserts that the *Act* is not a valid regulatory scheme under the *Westbank* analysis. The CTF's submissions ignore the operation of the *Act* and the evidence. If the fuel levy were held to be a tax, s. 125 of the *Constitution Act, 1867* does not render the *Act* unconstitutional.

7. Canada also presents submissions supporting the Aboriginal and treaty rights issues raised by the Athabasca Chipewyan First Nation (ACFN), Anishinabek Nation and United Chiefs and Councils of Mnidoo Mnising (UCCMM), and the Assembly of First Nations (AFN), and acknowledging the submission of the Assembly of Manitoba Chiefs (AMC).

PART III – STATEMENT OF ARGUMENT

A) Reply to Quebec, New Brunswick, Manitoba, and Alberta on Parliament's peace, order, and good government (POGG) power

8. But for a few points, addressed here, the arguments advanced by these provinces are substantively similar to the Appellants' arguments and are addressed in Canada's Factum.

9. In various ways, Quebec, Manitoba, and Alberta all assert that the Governor in Council's discretion in assessing the stringency of provincial carbon pricing systems is undefined and unconstrained.[1] However, the evidentiary record (extrinsic and legislative) clearly establishes that the Governor in Council assesses stringency based on the Benchmark.[2] The evidence also establishes that the Benchmark criteria have been fully communicated to all provinces and territories, and that the 2018 Benchmark assessment process undertaken by Environment and Climate Change Canada (ECCC) officials, in supporting the Governor in Council's decision making process, was fully transparent.[3] Their concerns that upholding the *Act* will distort the federal-provincial balance are overstated.

10. Quebec is primarily concerned with the validity and viability of its cap-and-trade system. Upholding Parliament's jurisdiction to *establish minimum national standards integral to reducing nationwide GHG emissions* limits it to the aspects of the problem of reducing GHG emissions that are outside provincial competence, including provinces' jurisdiction over "all Matters of a merely *local* or private Nature *in the Province*".[4] This

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[1] Quebec's Factum at para 75; Manitoba's Factum at paras 3, 24, 29, 40-44, 51; Alberta's Factum at paras 73-75.

[2] See Canada's Factum at paras 28-30, 32, 34-35, 38, 45-46, 59-61, 101, 105, 158-59; *Act*, ss 166(2), 166(3), 189(1), 189(2); *Order Amending Part 2 of Schedule 1 to the Greenhouse Gas Pollution Pricing Act*, SOR/2018-212, (2019) C Gaz II, 3761, 3763-64, 3774-76. See also, *R v Hydro-Québec*, [1997] 3 SCR 213 at paras 133-148, esp 148.

[3] CR, Vols 1, 3, Tab 1, Affidavit of John Moffet, affirmed January 29, 2019 [**Moffet**] at paras 72-76, 86, 89-92, 119-21; Exhibit [**Ex**] S at 695-97, Ex W at 811-15. See Canada's Factum footnote 1 for the citation convention used for CR references.

[4] *Constitution Act, 1867*, s 92(16). Canada generally accepts Quebec's analysis at paragraphs 15-23 of its Factum. But see *Reference re Assisted Human Reproduction Act*, 2010 SCC 61, [2010] 3 SCR 457 at 262-64 regarding provinces' residual powers in s 92(13) and s 92(16).

matter of national concern respects Quebec's jurisdiction and does not affect the validity of the legislation establishing its cap-and-trade system.[5]

11. Quebec's cap-and-trade system meets the federal Benchmark. There is no evidence supporting Quebec's assertion that the annual stringency assessment process for the purposes of administering the *Act* risks undermining the "predictability, stability, or integrity" of Quebec's system.[6]

12. New Brunswick's principal argument is that both the SKCA and ONCA majority decisions erroneously conflated characterization and classification because each used the same phrase to describe the *Act*'s pith and substance and the matter that satisfies the national concern doctrine test. There is no dispute in these appeals that the two-stage division of powers analysis applies and that characterization and classification (here under Parliament's POGG power) are analytically distinct. It is equally clear that both the SKCA and ONCA majority judgments undertook analytically distinct characterization and classification analyses.[7] Contrary to New Brunswick's submissions, it is not an error to describe the *Act*'s pith and substance in the same terms as the matter of national concern.[8]

13. Manitoba's principal argument is that the *Act* does not ensure minimum national standards because the provincial carbon pricing schemes assessed as meeting the Benchmark are not precisely uniform, a feature it says is necessary for Parliament's exercise of its POGG power.[9] However, within the technical and complex context of carbon pricing, provided provincial systems are comparably stringent, as assessed according to the criteria in the Benchmark, the *Act* achieves the level of "uniformity" needed to address the negative

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[5] See Canada's Factum at paras 112-18; Andrew Leach & Eric M Adams, "Seeing Double: Peace, Order, and Good Government, and the Impact of Federal Greenhouse Gas Emissions Legislation on Provincial Jurisdiction" (2020) 29:1 Const Forum Const 1 at 5-7, 9-10, 12-13.
[6] Quebec's Factum at paras 7(c), 13, 75
[7] *Reference Re Greenhouse Gas Pollution Pricing Act*, 2019 SKCA 40 at para 118 [**SKCA Reasons**]; *Reference re Greenhouse Gas Pollution Pricing Act*, 2019 ONCA 544 at paras 67-77.
[8] See for example *Munro v National Capital Commission*, [1966] SCR 663 at 671.
[9] Manitoba's Factum at paras 3, 17, 24, 36-55.

interprovincial impacts (i.e. interprovincial carbon leakage) that result if a province entirely or substantively fails to implement a sufficiently stringent carbon pricing system.

14. Some of Manitoba's arguments relate more to the issue of the administrative law *vires* of the Governor in Council's decision to apply the federal carbon pricing system (the "backstop") in Manitoba, which is an issue in Manitoba's related judicial review application in the Federal Court and for which the responding evidence is not before this Court.[10] In any event, Manitoba's submission that modelling emissions reductions is the *only* proper basis to assess stringency is not supported by the Working Group on Carbon Pricing Mechanisms report on which Manitoba relies.[11] Rather, the Working Group noted that "there are a number of ways to compare stringency" and "no clear best option" among the five methods the Final Report discusses. Regarding modelling emissions reductions, the Working Group reported that it "could allow for the comparison of stringencies of a number of policies, … but is subject to the uncertainties and assumptions necessary to model."[12]

15. Assessing the overall stringency of any provincial carbon pricing system against the Benchmark is a complex analysis.[13] The outcome of the 2018 Benchmark assessment process is reflected in the *Regulatory Impact Analysis Statement* for the regulation establishing where Part 2 of the *Act* would apply.[14] However, evidence detailing the complex analysis for each provincial system is not before this Court. Manitoba's high-level identification of variations in a few specific details between some of these systems takes those details out of context.

16. Taking Alberta as an example, Manitoba singles out Alberta's temporary exemption for small conventional oil and gas facilities from the carbon levy until 2023.[15] As Alberta

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[10] Manitoba's Factum at paras 8-12, 45-49, 53. *Her Majesty the Queen in Right of Manitoba v Governor in Council and Attorney General of Canada*, Court File No. T-685-19.
[11] CR, Vols 1-2, Tab 1, Moffet at para 57, Ex R at 672-675.
[12] CR, Vol 2, Tab 1, Moffet, Ex R at 673, 675.
[13] See para 9, footnote 3 above.
[14] CR, Vol 1, Tab 1, Moffet at para 126; *Order Amending Part 2 of Schedule 1 to the Greenhouse Gas Pollution Pricing Act*, SOR/2018-212, (2019) C Gaz II, 3761, 3763-64, 3774-76.
[15] Manitoba's Factum at para 49 (pp 15-16) and references at footnote 44.

indicates, this temporary exemption was in place due to Alberta's policies aimed at reducing methane emissions from this sector.[16] Additionally, Alberta's system for large industrial emitters (since repealed) covered sources of emissions (such as certain process emission sources) not covered under British Columbia's system (being the Benchmark measure for the scope of coverage) and Alberta's carbon price was $30 per tonne in 2019 (i.e. $10 per tonne higher than the minimum price under the Benchmark).[17] In these respects, Alberta's system exceeded the minimum stringency requirements in the Benchmark.

17. In the complex context of carbon pricing, ensuring that provinces have precisely uniform carbon pricing systems is not a necessary outcome to characterize the *Act*'s pith and substance as *ensuring minimum national standards integral to reducing nationwide GHG emissions*. Paradoxically, it would have been far more intrusive of provincial jurisdiction if Parliament took what Manitoba argues is the required approach.

18. Alberta's submissions are internally inconsistent. Alberta's description of the nature of the national concern doctrine draws on Professor Lederman's thesis, including that pervasive subjects must be broken down into parts and, if some of those parts are not within an enumerated power, the federal general power will embrace those that are of inherent national importance.[18] In his seminal essay, Professor Lederman references *Interprovincial Co-Operatives Ltd* as providing an example for pollution.[19] But then, without any pith and substance analysis, Alberta presumes that the matter of the *Act* is "GHG emissions" generally[20] and dismisses Canada's specific characterization of the *Act*'s pith and substance

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[16] Alberta's Factum at para 76; Ontario's Record [OR], Tab 12, OR (ONCA), Vol 3, Tab 37, Alberta Climate Leadership Plan: Progress Report [**Alberta CLP Report**] at 962-63.
[17] *Carbon Competitiveness Incentive Regulations*, Alta Reg 255/2017, s 1(1)(j); OR, Tab 12, OR (ONCA), Vol 3, Tab 37, Alberta CLP Report at 957; CR, Vol 3, Tab 1, Moffet, Ex W at 812-13
[18] Alberta Factum, paras 25, 26. WR Lederman, "Unity and Diversity in Canadian Federalism: Ideals and Methods of Moderation" (1976) 14 Alta L Rev 34 at 44 [**Lederman**].
[19] Lederman at 45; *Interprovincial Co-Operatives Ltd et al v R*, [1976] 1 SCR 477.
[20] Alberta's Factum at paras 35-57.

as "artificial".[21] Additionally, Alberta distorts Canada's position in asserting that Canada concedes the *Act* regulates matters falling within provincial jurisdiction.[22]

19. Canada's actual submissions and approach to characterization and classification satisfies Professor Lederman's methodology. The *Act* cannot be given a "dominant classification" which is both wholly within the provincial powers, and which is "satisfactory in terms of [Canada's] social needs and facts".[23] Canada's characterization equally avoids the sort of vague and general characterizations this Court has recently held to be unhelpful in determining pith and substance.[24]

20. Some of Alberta's submissions asserting that the *Act* intrudes heavily into provincial jurisdiction and addressing the "provincial inability" argument mischaracterize the factual record. Alberta's assertion that it is deprived of jurisdiction omits the fact that its newly-enacted industrial pricing system has been assessed as meeting the federal Benchmark.[25] Regarding Alberta's statement that the Benchmark takes a cap-and-trade system off the table for Alberta, Alberta could adopt such a system if it chose to do so, but it would need to substantially increase its 2030 emissions-reduction target.[26] Moreover, since it began pricing carbon emissions in 2007, Alberta has never opted for a cap-and-trade system. Alberta is correct that "GHG emissions reductions policies interact in complex ways" but the evidence before the Court of Appeal of Alberta refuted its assertion that implementing Part 1 of the *Act* in Alberta would undermine Alberta's emissions reductions policies.[27] Alberta's assertion that Canada's evidence in the Alberta Reference suggested that carbon leakage is

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[21] Alberta's Factum at paras 58-69.
[22] Alberta's Factum at para 44.
[23] Lederman at 40.
[24] *Desgagnés Transport Inc v Wärtsilä Canada Inc*, 2019 SCC 58 at paras 35, 166-67.
[25] Alberta's Factum at paras 71, 76; Department of Finance Canada, *Integrating Alberta's Carbon Pollution Pricing System for Large Industrial Emitters With the Federal Fuel Charge*, (Ottawa: Department of Finance Canada, 6 December 2019); *Part 1 of the Greenhouse Gas Pollution Pricing Act Regulations (Alberta)*, SOR/2019-294. See Canada's Factum at para 46.
[26] Alberta's Factum at para 72; CR, Vols 1, 3, Tab 1, Moffet at para 89, Ex W at 813; CR, Vol 3, Tab 2, Affidavit of Dr. Dominique Blain affirmed January 25, 2019 at para 21.
[27] Alberta's Factum at para 76. See also *Reference re Greenhouse Gas Pollution Pricing Act*, 2019 ABCA 349 at paras 18-23.

generally not a problem decontextualizes and misrepresents this evidence, which was filed in response to Alberta's evidence that suggested carbon leakage rates around 100%.[28]

21. Contrary to Alberta's assertion, this case is not about Canada imposing its preferred policy measures.[29] Rather, it is about whether there is a "factual matrix that supports [Parliament's] assertion of a constitutionally significant transformation"[30] such that federal action is necessary, whether the *Act* relates to a constitutionally distinct "matter", and whether the impact of recognizing this matter has a reconcilable impact on the balance of federalism.[31]

B) Reply to SaskEnergy/SaskPower on POGG

22. SaskEnergy/SaskPower have erroneously characterized the *Act*.[32] Its pith and substance is not "in relation to" the development, conservation and management of non-renewable natural resources and facilities for energy generation and production. The Benchmark provides that provincial pricing systems should apply to a broad set of emissions sources.[33] Where the federal pricing system applies, it includes many sectors beyond those coming within s. 92A of the *Constitution Act, 1867*, such as: cement; chemical, plastic, and rubber manufacturing; food, beverage, and tobacco manufacturing, among others.[34]

23. Contrary to SaskEnergy/SaskPower's suggestion, their s. 92A submissions were considered by the entire SKCA, as their submissions were made in that court (based on inter-jurisdictional immunity).[35] SaskEnergy/SaskPower's submissions in this Court that the *Act* is unconstitutional because it encroaches on provincial powers under s. 92A fail for the reasons set out in Canada's Factum.[36]

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[28] Alberta's Factum at paras 88, 89. See Canada's Factum at paras 27, 42-43, 101, 105.
[29] Alberta's Factum at paras 6, 14, 15, 91-96.
[30] *Reference re Securities Act*, 2011 SCC 66 at para 115, [2011] 3 SCR 837.
[31] See also Canada's Factum at para 74.
[32] SaskEnergy/SaskPower's Factum at paras 5; See Canada's Factum at paras 56-64.
[33] CR, Vol 3, Tab 1, Moffet, Ex W at 812.
[34] *Output Based Pricing System Regulations*, SOR 2019-266, Schedule 1 at 5304-16, Schedule 3 at 5320-67, RIAS at 5380-82, 5417-18.
[35] SaskEnergy/SaskPower Factum at para 6; SKCA Reasons at paras 205-09, 344.
[36] SaskEnergy/SaskPower Factum at paras 1, 6, 9-21; Canada's Factum at paras 119-22.

C) Reply to the CTF

24. Canada repeats and relies on the submissions made in its main factum in response to the submissions of the CTF and adds the following.

25. Underpinning the CTF's argument is its assertion that the *Act* is not designed to produce behavioural change, but is rather designed simply to make taxpayers "pay more tax".[37] This assertion ignores the operation of the *Act* and the evidence, which shows that carbon pricing is widely accepted as one of the most effective ways to reduce GHG emissions.[38]

26. The *Act* is a valid regulatory scheme under the *Westbank* analysis.[39] The SKCA majority agreed that both the fuel charge in Part 1 and the output-based pricing system in Part 2, including the excess emissions charge, met the first part of the test. Both Parts are complementary components of a single regulatory scheme intended to encourage behavioural change, through a price signal, in order to reduce GHG emissions.[40]

27. The *Act* is not similar to the legislation considered by this Court in *Re: Exported Natural Gas Tax*, which, in pith and substance, was found to be taxation. This Court made that finding because the legislation in *Re: Exported Natural Gas Tax* added nothing to the existing structure of gas regulation, save revenue. In contrast, the *Act* clearly does not have the generation of revenue as its purpose.[41]

28. The second indicium, the presence of a regulatory purpose that seeks to affect behaviour, is decidedly met.[42] The *Act* is not simply a "sales tax on fuel", as argued by the CTF.[43] The aim of the *Act* is to correct a market failure by ensuring there is a price on GHG

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[37] CTF Factum at paras 15, 18, 19, 22, 29, 30, 32.
[38] See Canada's Factum at paras 22, 27, 48-49, 133-34.
[39] *Westbank First Nation v British Columbia Hydro and Power Authority*, [1999] 3 SCR 134 at paras 30, 43, 44 [***Westbank***], *620 Connaught Ltd v Canada (Attorney General)*, 2008 SCC 7 at paras 24-28, [2008] 1 SCR 131 [***620 Connaught***].
[40] SKCA Reasons at paras 80, 91; CR, Vols 1, 3, Tab 1, Moffet at paras 101-16, Ex R at 640.
[41] *Contra* CTF Factum at paras 14-17; *Re: Exported Natural Gas Tax*, [1982] 1 SCR 1004 at 1077; *Act*, Preamble, s 165(2); SKCA Reasons at paras 85-87.
[42] SKCA Reasons at paras 81, 92.
[43] CTF Factum at para 18.

emissions throughout Canada to encourage customers and industry to adopt emissions-reducing behaviour and to encourage innovation in low-emissions technologies.[44] In contrast to the CTF's submissions, the efficacy of carbon pricing is supported by evidence and is not mere conjecture. The result will be lower GHG emissions.[45]

29. The third indicium is not relevant in this case.[46] The charges are not imposed to defray the costs of the scheme as suggested by the CTF, but as the catalyst for behavioural change.[47] Thus focusing on actual or estimated regulatory costs does not assist in determining the existence of a regulatory scheme.[48]

30. 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. It does not ask what the "triggering condition" is for the payment of the charge.[49] The necessary relationship is present in both Parts. 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. The production, delivery, and use of fossil fuels produces 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.[50] This connection is sufficient to establish the relationship.

31. If this Court finds that Part 1 of the *Act* imposes a tax, Canada agrees that SaskEnergy/SaskPower, as agents of the Crown, would not be subject to the tax; it would not

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[44] *Act*, Preamble, paras 10-15; Canada's Factum at paras 22, 36-49, 134.
[45] CTF Factum at paras 19-22; CR, Vols 1-3, Tab 1, Moffet at paras 46-48, 50-52, 123, 125, Ex K at 394, 398-400, 406, Ex N at 475, Ex R at Ex 640, CC at 864-68; CR, Vol 4, Tab 3, Affidavit of Warren Goodlet affirmed January 25, 2019 at paras 17-18, 24 and 26-28; Affidavit of Dr. Nicholas Rivers affirmed January 25, 2019 at paras 5-6, Ex B at 1090-1122.
[46] CTF Factum at para 23.
[47] See Canada's factum at para 138.
[48] *Westbank* at paras 24, 44; *620 Connaught* at para 20; *Canadian Association of Broadcasters v Canada*, 2008 FCA 157 at para 53, leave to appeal granted, [2008] 3 SCR x, appeal discontinued October 7, 2009. See also SKCA Reasons at paras 82, 93.
[49] CTF Factum at para 25.
[50] *Contra* CTF Factum at paras 25-27.

be applicable by reason of s. 125 of the *Constitution Act, 1867*. However, such a finding would not render Part 1 unconstitutional.[51]

D) Aboriginal Rights

32. Three interveners, a First Nation (ACFN) and two groups of related First Nations (Anishinabek Nation and UCCMM) having s. 35 rights, and an organization that advocates for the interests and concerns of First Nations (AFN), have provided their perspectives in supporting the constitutionality of the *Act*. Canada recognizes that climate change is having, and will continue to have, disproportionate impacts on First Nations across Canada, including on their constitutionally protected Aboriginal and treaty rights. Canada agrees with these interveners that the answers to the questions posed on this appeal must be respectful of the entire constitutional framework, including interpreting and applying Parliament's POGG power in a manner that is consistent with s. 35 of the *Constitution Act, 1982*.

33. The AMC raises broad questions concerning reconciliation, but its submissions do not directly address the questions before the Court in these appeals. The evidentiary record before the Court in this case is insufficient for the purposes of engaging with questions about how First Nations laws are to be recognized within our constitutional framework.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated this 10th day of February, 2020.

Sharlene Telles-Langdon	Christine Mohr	Mary Matthews

Neil Goodridge	Ned Djordjevic Of Counsel for the Attorney General of Canada

[51] *Contra* SaskPower/SaskEnergy Factum at para 22; SKCA Reasons at paras 206-209, 344; *Canada (Attorney General) v British Columbia Investment Management Corp*, 2019 SCC 63 at para 68.

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Case Law		**Cited at paragraphs**
1.	*620 Connaught Ltd v Canada (Attorney General)*, 2008 SCC 7, [2008] 1 SCR 131	26, 29
2.	*Canada (Attorney General) v British Columbia Investment Management Corp*, 2019 SCC 63	31
3.	*Canadian Association of Broadcasters v Canada*, 2008 FCA 157, [2009] 1 FCR 3, leave to appeal to SCC granted, 32703 (18 December 2008), appeal discontinued 7 October 2009	29
4.	*Desgagnés Transport Inc v Wärtsilä Canada Inc*, 2019 SCC 58	19
5.	*Interprovincial Co-Operatives Ltd et al v R*, [1976] 1 SCR 477	18
6.	*Munro v National Capital Commission*, [1966] SCR 663	12
7.	*R v Hydro-Québec*, [1997] 3 SCR 213	9
8.	*Re: Exported Natural Gas Tax*, [1982] 1 SCR 1004	27
9.	*Reference re Assisted Human Reproduction Act*, 2010 SCC 61, [2010] 3 SCR 457	10
10.	*Reference re Greenhouse Gas Pollution Pricing Act*, 2019 ABCA 349	20
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13.	*Reference re Securities Act*, 2011 SCC 66, [2011] 3 SCR 837	21
14.	*Westbank First Nation v British Columbia Hydro and Power Authority*, [1999] 3 SCR 134	26, 29

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15.	*Carbon Competitiveness Incentive Regulations*, Alta Reg 255/2017, s 1(1)(j).		16
16.	*Constitution Act, 1867*, (UK) 30 & 31 Victoria, c 3, s 92, 92A, 125	*Loi constitutionnelle de 1867*, (R-U) 30 & 31 Victoria, c 3, arts 92, 92A 125	5, 6, 10, 22, 23, 31
17.	*Constitution Act, 1982*, s 35, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11	*Loi constitutionnelle de 1982*, art 35, constituant l'annexe B de la *Loi de 1982 sur le Canada* (R-U), 1982, c 11	32
18.	*Greenhouse Gas Pollution Pricing Act*, being Part 5 of the *Budget Implementation Act, 2018, No 1*, SC 2018, c 12, s 186 Preamble **Part 1**,sections 165(2) 166(2) 166(3) **Part 2**, sections 189(1) 189(2)	*Loi sur la tarification de la pollution causée par les gaz à effet de serre*, constituant la partie 5 de la *Loi n^{o} 1 d'exécution du budget de 2018*, LC 2018, c 12, art 186 Préambule **Partie 1**, articles 165(2) 166(2) 166(3) **Partie 2**, articles 189(1) 189(2)	9, 27, 28
19.	*Order Amending Part 2 of Schedule 1 to the Greenhouse Gas Pollution Pricing Act*, SOR/2018-212, (2019) C Gaz II at 3761, 3763-64, 3774--76	*Décret modifiant la partie 2 de l'annexe 1 de la Loi sur la tarification de la pollution causée par les gaz à effet de serre*, DORS/2018-212, (2019) Gaz C II aux pp 3761, 3763-64, 3774-76	9, 15

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20.	*Output-Based Pricing System Regulations*, SOR/2019-266, (2019) C Gaz II, Schedule 1 at 5304-16, Schedule 3 at 5320-67, RIAS at 5380-82, 5417-18	*Règlement sur le système de tarification fondé sur le rendement*, DORS/2019-266, (2019) Gas C II, Annexe 1 aux pp 5304-16, Annexe 3 aux pp 5320-67, REIR aux pp 5380-82, 5417-18	22
21.	*Part 1 of the Greenhouse Gas Pollution Pricing Act Regulations (Alberta)*, SOR/2019-294, (2019) C Gaz II, 5875-902	*Règlement relatif à la partie 1 de la Loi sur la tarification de la pollution causée par les gaz à effet de serre (Alberta)*, DORS/2019-294, (2019) Gaz C II, 5875-902	20

Other Secondary Sources		**Cited at paragraphs**
22.	WR Lederman, "Unity and Diversity in Canadian Federalism: Ideals and Methods of Moderation" (1976) 14 Alta L Rev 34	18, 19
23.	Andrew Leach & Eric M Adams, "Seeing Double: Peace, Order, and Good Government, and the Impact of Federal Greenhouse Gas Emissions Legislation on Provincial Jurisdiction" (2020) 29:1 Const Forum Const 1	10
24.	Department of Finance Canada, *Integrating Alberta's Carbon Pollution Pricing System for Large Industrial Emitters With the Federal Fuel Charge*, (Ottawa: Department of Finance Canada, 6 December 2019)	20