Court File No: **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 ALBERTA, ATTORNEY GENERAL OF BRITISH COLUMBIA, ATTORNEY GENERAL OF MANITOBA, ATTORNEY GENERAL OF NEW BRUNSWICK, ATTORNEY GENERAL OF QUEBEC, ATTORNEY GENERAL FOR SASKATCHEWAN, PROGRESS ALBERTA COMMUNICATIONS LIMITED, ANISHINABEK NATION and UNITED CHIEFS AND COUNCILS OF MNIDOO MNISING, CANADIAN LABOUR CONGRESS, SASKATCHEWAN POWER CORPORATION and SASKENERGY INCORPORATED, OCEANS NORTH CONSERVATION SOCIETY, ASSEMBLY OF FIRST NATIONS, CANADIAN TAXPAYERS FEDERATION, CANADA'S ECOFISCAL COMMISSION, CANADIAN ENVIRONMENTAL LAW ASSOCIATION, ENVIRONMENTAL DEFENCE CANADA INC., and SISTERS OF PROVIDENCE OF ST. VINCENT DE PAUL, AMNESTY INTERNATIONAL CANADA, NATIONAL ASSOCIATION OF WOMEN AND THE LAW and FRIENDS OF THE EARTH, INTERNATIONAL EMISSIONS TRADING ASSOCIATION, DAVID SUZUKI FOUNDATION, ATHABASCA CHIPEWYAN FIRST NATION, SMART PROSPERITY INSTITUTE, CANADIAN PUBLIC HEALTH ASSOCIATION, CLIMATE JUSTICE SASKATOON, NATIONAL FARMERS UNION, SASKATCHEWAN COALITION FOR SUSTAINABLE DEVELOPMENT, SASKATCHWEAN COUNCIL FOR INTERNATIONAL DEVELOPMENT,

---

REPLY FACTUM OF THE APPELLANT, THE ATTORNEY GENERAL OF ONTARIO

(pursuant to r. 42 of the *Rules of the Supreme Court of Canada*)

(Title of Proceedings continued on p. 2)

SASKATCHEWAN ENVIRONMENTAL SOCIETY, SASKEV, COUNCIL OF CANADIANS: PRAIRIE AND NORTHWEST TERRITORIES REGION, COUNCIL OF CANADIANS: REGINA CHAPTER, COUNCIL OF CANADIANS: SASKATOON CHAPTER, NEW-BRUNSWICK ANTI-SHALE GAS ALLIANCE and YOUTH OF THE EARTH, CENTRE QUÉBÉCOIS DU DROIT DE L'ENVIRONNEMENT ET ÉQUITERRE, GENERATION SQUEEZE, PUBLIC HEALTH ASSOCIATION OF BRITISH COLUMBIA, SASKATCHEWAN PUBLIC HEALTH ASSOCIATION, CANADIAN ASSOCIATION OF PHYSICIANS FOR THE ENVIRONMENT, CANADIAN COALITION FOR THE RIGHTS OF THE CHILD, and YOUTH CLIMATE LAB, ASSEMBLY OF MANITOBA CHIEFS, CITY OF RICHMOND, CITY OF VICTORIA, CITY OF NELSON, DISTRICT OF SQUAMISH, CITY OF ROSSLAND, and CITY OF VANCOUVER

Interveners

REPLY FACTUM OF THE APPELLANT,
THE ATTORNEY GENERAL OF ONTARIO
(pursuant to r. 42 of the *Rules of the Supreme Court of Canada*)

ATTORNEY GENERAL OF ONTARIO
Constitutional Law Branch
720 Bay Street, 4th Floor
Toronto, ON M7A 2S9

Josh Hunter / Padraic Ryan / Aud Ranalli
Tel: (416) 908-7465 / (416) 992-2276 / (416) 389-2604
Fax: (416) 326-4015
Email: joshua.hunter@ontario.ca / padraic.ryan@ontario.ca / aud.ranalli@ontario.ca

Counsel for the Appellant,
the Attorney General of Ontario

SUPREME ADVOCACY LLP
340 Gilmour Street
Suite 100
Ottawa, ON K2P 0R3

Marie-France Major
Tel: (613) 695-8855
Fax: (613) 695-8580
mfmajor@supremeadvocacy.ca

Agent for the Appellant,
the Attorney General of Ontario

ORIGINAL TO:

THE REGISTRAR
301 Wellington Street
Ottawa, ON K1A 0J1

COPIES TO:

ATTORNEY GENERAL OF CANADA
Department of Justice Canada
Prairie Regional Office
301-310 Broadway Avenue
Winnipeg, MB R3C 0S6

Sharlene Telles-Langdon / Christine Moore / Mary Matthews / Neil Goodridge

Tel.: (204) 983-0862
Fax: (204) 984-8495
Email: sharlene.telles-langdon@justice.gc.ca

Counsel for the Respondent,
the Attorney General of Canada

DEPARTMENT OF JUSTICE
50 O'Connor Street
Suite 500
Ottawa, ON K1A 0H8

Christopher Rupar

Tel.: (613) 670-6290
Fax: (613) 954-1920
Email: christopher.rupar@justice.gc.ca

Agent for the Respondent,
the Attorney General of Canada

GALL LEGGE GRANT ZWACK LLP
1199 West Hastings Street
Suite 1000
Vancouver, BC V6E 3T5

Peter A. Gall, Q.C. / Benjamin J. Oliphant

Tel.: (604) 891-1152
Fax: (604) 669-5101
Email: pgall@glgzlaw.com / boliphant@glgzlaw.com

CAZASAIKALEY LLP
320 – 220 avenue Laurier Ouest
Ottawa, ON K1P 5Z9

Alyssa Tomkins

Tel.: (613) 565-2292
Fax: (613) 565-2087
Email: atomkins@plaideurs.ca

MCLENNAN ROSS LLP
600, 12220 Stony Plain Road
Edmonton, AB T5N 3Y4

Steven A.A. Dollansky
Tel.: (780) 482-9217
Fax: (780) 482-9100
Email: sdollansky@mross.com

DEPARTMENT OF JUSTICE AND SOLICITOR GENERAL
10th Floor, Oxford Tower
10025 – 102A Avenue
Edmonton, AB T5J 2Z2

L. Christine Enns, QC
Tel.: (780) 422-9703
Fax: (780) 638-0852

Counsel for the Intervener,
the Attorney General of Alberta

Agent for the Intervener,
the Attorney General of Alberta

ATTORNEY GENERAL OF BRITISH COLUMBIA
1001 Douglas Street, 6th Floor
PO Box 9280 Stn Prov Govt
Victoria, BC V8W 9J7

J. Gareth Morley / Jacqueline Hughes

Tel.: (250) 952-7644
Fax: (250) 356-0064
Email: gareth.morley@gov.bc.ca /
jacqueline.hughes@gov.bc.ca

Counsel for the Intervener,
the Attorney General of British Columbia

MICHAEL J. SOBKIN
331 Somerset Street West
Ottawa, ON K2P 0J8

Michael J. Sobkin

Tel.: (613) 282-1712
Fax: (613) 288-2896
Email: msobkin@sympatico.ca

Agent for the Intervener,
the Attorney General of British Columbia

ATTORNEY GENERAL OF MANITOBA
Constitutional Law
1230 - 405 Broadway
Winnipeg, MB R3C 3L6

Michael Connor / Allison Kindle Pejovic

Tel.: (204) 945-6723
Fax: (204) 945-0053
Email: michael.conner@gov.mb.ca /
allison.pejovic@gov.mb.ca

Counsel for the Intervener,
the Attorney General of Manitoba

GOWLING WLG (CANADA) LLP
160 Elgin Street
Suite 2600
Ottawa, ON K1P 1C3

D. Lynne Watt

Tel.: (613) 786-8695
Fax: (613) 788-3509
Email: lynne.watt@gowlingwlg.com

Agent for the Intervener,
the Attorney General of Manitoba

ATTORNEY GENERAL OF NEW BRUNSWICK
Legal Services Branch
P.O. Box 6000, Stn. A.
675 King Street, Suite 2018
Fredericton, NB E3B 5H1

Rachelle Standing / Isabel Lavoie Daigle

Tel.: (506) 453-2222
Fax: (506) 453-3275
Email: rachelle.standing@gov.nb.ca / isabel.lavoiedaigle@gov.nb.ca

Counsel for the Intervener,
the Attorney General of New Brunswick

GOWLING WLG (CANADA) LLP
160 Elgin Street
Suite 2600
Ottawa, ON K1P 1C3

D. Lynne Watt

Tel.: (613) 786-8695
Fax: (613) 788-3509
Email: lynne.watt@gowlingwlg.com

Agent for the Intervener,
the Attorney General of New Brunswick

ATTORNEY GENERAL OF QUEBEC
Ministère de la justice du Québec
Direction du droit constitutionnel et autochtone
1200 Route de l'Église, 4e étage
Québec, QC G1V 4M1

Jean-Vincent Lacroix / Laurie Anctil

Tel: (418) 643-1477 x 20779/20828
Fax: (418) 644-7030
E-mail: jean-vincent.lacroix@justice.gouv.qc.ca / laurie.anctil@justice.gouv.qc.ca

Counsel for the Intervener,
the Attorney General of Québec

NÖEL & ASSOCIÉS 111, rue Champlain
Gatineau, QC J8X 3R1

Pierre Landry

Tel: (819) 503-2178
Fax: (819) 771-5397
E-mail: p.landry@noelassocies.com

Agent for the Intervener,
the Attorney General of Québec

ATTORNEY GENERAL FOR SASKATCHEWAN
820 - 1874 Scarth St
Aboriginal Law Branch
Regina, SK S3P 3B3

P. Mitch McAdam, QC / Alan Jacobson

Tel.: (306) 787-7846
Fax: (306) 787-9111
Email: mitch.mcadam@gov.sk.ca

GOWLING WLG (CANADA) LLP
160 Elgin Street
Suite 2600
Ottawa, ON K1P 1C3

D. Lynne Watt

Tel.: (613) 786-8695
Fax: (613) 788-3509
Email: lynne.watt@gowlingwlg.com

MLT AIKINS LLP
1500 – 1874 Scarth Street
Regina, SK S4P 4E9

Deron Kuski, QC / Jodi Wildeman
Tel.: (306) 347-8404
Fax: (306) 352-5250
Email: dkuski@mltaikins.com /
jwildeman@mltaikins.com

Counsel for the Appellant/Intervener,
the Attorney General for Saskatchewan

Agent for the Appellant/Intervener,
the Attorney General for Saskatchewan

NANDA & COMPANY
3400 Manulife Place
10180 – 101 Street NW
Edmonton, AB T5J 4K1

Avnish Nanda / Martin Olszynski
Tel.: (780) 801-5324
Fax: (587) 318-1391
Email: avnish@nandalaw.ca

Counsel for the Intervener,
Progress Alberta Communications Limited

MCGUINTY LAW OFFICES
1192 Rockingham Avenue
Ottawa, ON K1H 8A7

Dylan McGuinty Jr.
Tel.: (613) 526-3858
Fax: (613) 526-3187
Email: dylanjr@mcguintylaw.ca

Agent for the Intervener,
Progress Alberta Communications Limited

WESTAWAY LAW GROUP
55 Murray Street, Suite 230
Ottawa, ON K1N 5M3

Cynthia Westaway / Patricia Lawrence
Tel.: (613) 722-9091 / (613) 702-3031
Fax: (613) 722-9097
Email: cynthia@westawaylaw.ca /
patricia@westawaylaw.ca

Counsel for the Interveners,
Anishinabek Nation and the United Chiefs
and Councils of Mnidoo Mnising

WESTAWAY LAW GROUP
55 Murray Street, Suite 230
Ottawa, ON K1N 5M3

Geneviève Boulay
Tel.: (613) 702-3042
Fax: (613) 722-9097
Email: genevieve@westawaylaw.ca

Agent for the Interveners,
Anishinabek Nation and the United Chiefs
and Councils of Mnidoo Mnising

GOLDBLATT PARTNERS LLP
20 Dundas Street West, Suite 1039
Toronto, ON M5G 2C2

Simon Archer / Mariam Moktar / Daniel Sheppard
Tel.: (416) 977-6070
Fax: (416) 591-7333
Email: sarcher@goldblattpartners.com

Counsel for the Intervener,
Canadian Labour Congress

GOLDBLATT PARTNERS LLP
30 Metcalfe Street, Suite 500
Ottawa, ON K1P 5L4

Colleen Bauman
Tel.: (613) 482-2463
Fax: (613) 235-3041
Email: cbauman@goldblattpartners.com

Agent for the Intervener,
Canadian Labour Congress

MCKERCHER LLP
374 Third Avenue South
Saskatoon, SK S7K 1M5

David M.A. Stack, QC
Tel.: (306) 664-1277
Fax: (306) 653-2669
Email: d.stack@mckercher.ca

Counsel for the Interveners,
Saskatchewan Power Corp. and
SaskEnergy Inc.

GOWLING WLG (CANADA) LLP
2600 – 160 Elgin Street
Ottawa, ON K1P 1C3

D. Lynne Watt
Tel.: (613) 786-8695
Fax: (613) 788-3509
Email: lynne.watt@gowlingwlg.com

Agent for the Interveners,
Saskatchewan Power Corp. and
SaskEnergy Inc.

ARVAY FINLAY LLP
1512-808 Nelson Street
Vancouver, BC V6Z 2H2

David W.L. Wu
Tel.: (604) 696-9828
Fax: (888) 575-3281
Email: dwu@arvayfinlay.ca

Counsel for the Intervener,
Oceans North Conservation Society

SUPREME LAW GROUP
900-275 Slater Street
Ottawa, ON K1P 5H9

Moira Dillon
Tel.: (613) 691-1224
Fax: (613) 691-1338
Email: mdillon@supremelawgroup.ca

Agent for the Intervener,
Oceans North Conservation Society

ASSEMBLY OF FIRST NATIONS
55 Metcalfe Street, Suite 1600
Ottawa, ON K1P 6L5

Stuart Wuttke / Adam S.R. Williamson
Tel.: (613) 241-6789
Fax: (613) 241-5808
Email: swuttke@afn.ca / a.williamson@afn.ca

Counsel for the Intervener,
Assembly of First Nations

SUPREME LAW GROUP
900-275 Slater Street
Ottawa, ON K1P 5H9

Moira Dillon
Tel.: (613) 691-1224
Fax: (613) 691-1338
Email: mdillon@supremelawgroup.ca

Agent for the Proposed Intervener,
Assembly of First Nations

CREASE HARMAN LLP
1070 Douglas Street, Unit 800
Victoria, BC V8W 2C4

R. Bruce E. Hallsor, QC / Hana Felix
Tel.: (205) 388-9124
Fax: (205) 388-4294
Email: bhallsor@crease.com / hfelix@crease.com

Counsel for the Intervener,
Canadian Taxpayers Federation

SUPREME ADVOCACY LLP
100 – 340 Gilmour Street
Ottawa, ON K2P 0R3

Marie-France Major
Tel: (613) 695-8855
Fax: (613) 695-8580
Email: mfmajor@supremeadvocacy.ca

Agent for the Intervener,
Canadian Taxpayers Federation

FACULTY OF LAW,
UNIVERSITY OF OTTAWA
57 Louis Pasteur Street
Ottawa, ON K1N 6N5

Stewart Elgie, LSM
Tel.: (613) 562-5800 x 1270
Email: stewart.elgie@uottawa.ca

Counsel for the Intervener,
Canada's Ecofiscal Commission

CHAMP & ASSOCIATES
Equity Chambers
43 Florence Street
Ottawa, ON K2P 0W6

Bijon Roy
Tel.: (613) 237-4740
Fax: (613) 232-2680
Email: broy@champlaw.ca

Agent for the Intervener,
Canada's Ecofiscal Commission

CANADIAN ENVIRONMENTAL LAW ASSOCIATION
1500-55 University Avenue
Toronto, ON M5J 2H7

Joseph F. Castrilli / Theresa McClenaghan / Richard D. Lindgren
Tel.: (416) 960-2284 x 7218 / 7219 / 7214
Fax: (416) 960-9392
Email: castrillij@sympatico.ca / theresa@cela.ca / r.lindgren@sympatico.ca

Counsel for the Interveners,
the Canadian Environmental Law Association

GOWLING WLG (CANADA) LLP
Suite 2600, 160 Elgin Street
Ottawa, ON K1P 1C3

Jeffrey W. Beedell
Tel.: (613) 786-0171
Fax: (613) 563-9869
Email: jeff.beedell@gowlingwlg.com

Agent for the Interveners,
the Canadian Environmental Law Association

STOCKWOODS LLP
TD North Tower
77 King Street West
Suite 4130, PO Box 140
Toronto, ON M5K 1H1

Justin Safayeni / Zachary Al-Khatib
Tel.: (416) 593-7200
Fax: (416) 593-9345
Email: justins@stockwoods.ca / zacharya@stockwoods.ca

Counsel for the Intervener,
Amnesty International Canada

CONWAY BAXTER WILSON LLP
400-411 Roosevelt Avenue
Ottawa, ON K2A 3X9

David Taylor
Tel.: (613) 691-0368
Fax: (613) 688-0271
Email: dtaylor@conway.pro

Agent for the Intervener,
Amnesty International Canada

NATIONAL ASSOCIATION OF WOMEN AND THE LAW and FRIENDS OF THE EARTH

Nathalie Chalifour / Anne Levesque
Tel.: (613) 562-5800 x 3331
Fax: (613) 562-5124
Email: nathalie.chalifour@uottawa.ca

Counsel for the Interveners,
National Association of Women and the Law and Friends of the Earth

CONWAY BAXTER WILSON LLP/SRL
400-411 Roosevelt Avenue
Ottawa, ON K2A 3X9

Marion Sandilands
Tel.: (613) 288-0149
Fax: (613) 688-0271
Email: msandilands@conway.pro

Agent for the Interveners,
National Association of Women and the Law and Friends of the Earth

DEMARCO ALLAN LLP
333 Bay Street, Suite 625
Toronto, ON M5H 2R2

Lisa (Elisabeth) DeMarco /
Jonathan McGillivray
Tel.: (647) 991-1190 / (647) 208-2677
Fax: (888) 734-9459
Email: lisa@demarcoallan.com /
jonathan@demarcoallen.com

Counsel for the Intervener,
International Emissions Trading Association

FASKEN MARTINEAU DUMOULIN LLP
55 Metcalfe Street, Suite 1300
Ottawa, ON K1P 6L5

Sophie Arseneault
Tel.: (613) 696-6904
Fax: (613) 230-6423
Email: sarseneault@fasken.com

Agent for the Intervener,
International Emissions Trading Association

ECOJUSTICE ENVIRONMENTAL LAW CLINIC AT THE UNIVERSITY OF OTTAWA
216-1 Stewart Street
Ottawa, ON K1N 6N5

Joshua Ginsberg / Randy Christensen
Tel.: (613) 562-5800 x 3399 /
(604) 685-5618 x 234
Fax: (613) 562-5319 / (604) 685-7813
Email: jginsberg@ecojustice.ca /
rchristensen@ecojustice.ca

Counsel for the Intervener,
David Suzuki Foundation

ECOJUSTICE ENVIRONMENTAL LAW CLINIC AT THE UNIVERSITY OF OTTAWA
216-1 Stewart Street
Ottawa, ON K1N 6N5

Joshua Ginsberg
Tel.: (613) 562-5800 x 3399
Fax: (613) 562-5319
Email: jginsberg@ecojustice.ca

Agent for the Intervener,
David Suzuki Foundation

ECOJUSTICE ENVIRONMENTAL LAW CLINIC AT THE UNIVERSITY OF OTTAWA
216-1 Stewart Street
Ottawa, ON K1N 6N5

Amir Attaran
Tel.: (613) 562-5800 x 3382
Fax: (613) 562-5319
Email: aattaran@ecojustice.ca

ECOJUSTICE ENVIRONMENTAL LAW CLINIC AT THE UNIVERSITY OF OTTAWA
216-1 Stewart Street
Ottawa, ON K1N 6N5

Amir Attaran
Tel.: (613) 562-5800 x 3382
Fax: (613) 562-5319
Email: aattaran@ecojustice.ca

WOODWARD & COMPANY LAWYERS LLP
200-1022 Government Street
Victoria, BC V8W 1X7

Matt Hulse
Tel.: (250) 383-2356
Fax: (250) 380-6560
Email: mhulse@woodwardandcompany.com

Counsel for the Intervener,
Athabasca Chipewyan First Nation

Agent for the Intervener,
Athabasca Chipewyan First Nation

SMART PROSPERITY INSTITUTE
1 Stewart Street, 3rd Floor
Ottawa, ON K1N 6N5

Jeremy de Beer
Tel.: (613) 562-5800 x 3169
Email: jeremy.debeer@uottawa.ca

Counsel for the Intervener,
Smart Prosperity Institute

GOWLING WLG (CANADA) LLP
2600 – 160 Elgin Street
Ottawa, ON K1P 1C3

Guy Régimbald
Tel.: (613) 786-0197
Fax: (613) 563-9869
Email: guy.regimbald@gowlingwlg.com

Agent for the Intervener,
Smart Prosperity Institute

GOWLING WLG (CANADA) LLP
Suite 1600, 1 First Canadian Place
100 King Street West
Toronto, ON M5X 1G5

Jennifer King / Michael Finley / Liane Langstaff
Tel.: (416) 862-7525
Fax: (416) 862-7661
Email: jennifer.king@gowlingwlg.com / michael.finley@gowlingwlg.com / liane.langstaff@gowlingwlg.com

Counsel for the Intervener,
Canadian Public Health Association

GOWLING WLG (CANADA) LLP
Suite 2600, 160 Elgin Street
Ottawa, ON K1P 1C3

Jeffrey W. Beedell
Tel.: (613) 786-0171
Fax: (613) 563-9869
Email: jeff.beedell@gowlingwlg.com

Agent for the Intervener,
Canadian Public Health Association

STOCKDALE LAW
#52 158 2nd Avenue North
Saskatoon, SK S7K 2B2

Larry Kowalchuk / Jonathan Stockdale / Taylor-Anne Yee
Tel.: (306) 880-9889
Fax: (306) 931-9889
Email: jonathan@stockdalelaw.ca / taylor@stockdalelaw.ca / larry@kowalchuklaw.ca

Counsel for the Interveners,
Climate Justice *et al.*

SUPREME LAW GROUP
900-275 Slater Street
Ottawa, ON K1P 5H9

Moira S. Dillon
Tel.: (613) 691-1224
Fax: (613) 691-1338
Email: mdillon@supremelawgroup.ca

Agent for the Interveners,
Climate Justice *et al.*

MICHEL BÉLANGER AVOCATS INC.
454, avenue Laurier Est
Montréal, QC H2J 1E7

David Robitaille / Marc Bishai
Tel.: (514) 991-9005
Fax: (514) 844-7009
Email: david.robitaille@uottawa.ca / marc.bishai@gmail.com

Counsel for the Interveners,
le Centre québécois du droit de l'environnement and Équiterre

POWER LAW
1103-130 Albert Street
Ottawa, ON K1P 5G4

Maxine Vincelette
Tel.: (613) 702-5573
Fax: (613) 702-5573
Email: mvincelette@powerlaw.ca

Agent for the Interveners,
le Centre québécois du droit de l'environnement and Équiterre

RATCLIFFE & COMPANY LLP
Suite 500 – 221 West Esplanade
North Vancouver, BC V7M 3J3

Nathan Hume / Emma Hume / Cam Brewer
Tel.: (604) 988-5201
Fax: (604) 988-1452
Email: nhume@ratcliff.com / ehume@ratcliff.com / cbrewer@ratcliff.com

Counsel for the Interveners,
Generation Squeeze *et al*

POWER LAW
Suite 1103 – 130 Albert Street
Ottawa, ON K1P 5G4

Darius Bossé
Tel.: (613) 702-5566
Fax: (613) 702-5566
Email: dbosse@juristespower.ca

Agent for the Interveners,
Generation Squeeze *et al.*

.

PUBLIC INTEREST LAW CENTRE
200-393 Portage Avenue
Winnipeg, MB R3B 3H6

Joëlle Pastora Sala / Byron Williams / Katrine Dilay
Tel.: (204) 985-8540
Fax: (204) 985-8544
Email: jopas@pilc.mb.ca / bywil@pilc.mb.ca / kadil@pilc.mb.ca

Counsel for the Intervener,
the Assembly of Manitoba Chiefs

POWER LAW
1103-130 Albert Street
Ottawa, ON K1P 5G4

Maxine Vincelette
Tel.: (613) 702-5573
Fax: (613) 702-5573
Email: mvincelette@powerlaw.ca

Agent for the Intervener,
the Assembly of Manitoba Chiefs

LIDSTONE & CO. LAW CORP.
1300-128 West Pender Street
Vancouver, BC V6B 1R8

Paul A. Hildebrand / Olivia French
Tel.: (604) 899-2269
Fax: (604) 899-2281
Email: hildebrand@lidstone.ca / french@lidstone.ca

Counsel for the Interveners,
City of Richmond, City of Victoria, City of Nelson, District of Squamish, City of Rossland, and City of Vancouver

POWER LAW
1103-130 Albert Street
Ottawa, ON K1P 5G4

Maxine Vincelette
Tel.: (613) 702-5573
Fax: (613) 702-5573
Email: mvincelette@powerlaw.ca

Agent for the Interveners,
City of Richmond, City of Victoria, City of Nelson, District of Squamish, City of Rossland, and City of Vancouver

TABLE OF CONTENTS

PART I – OVERVIEW 1

PART II – FACTS 1

PART III – ARGUMENT 2

A. The Interveners' National Concern Arguments Should Be Rejected 2

B. The Act Cannot Be Upheld Under the Emergency Branch of POGG 4

(1) The National Concern and Emergency Doctrines Should Remain Distinct 4

(2) Parliament Did Not Purport to Rely on the Emergency Doctrine 5

(3) The Emergency Doctrine Must Continue to Be Limited to Temporary Legislation ...5

(4) The Act Is Not Temporary in Nature 6

C. Treaties Do Not Give Parliament Any Greater Legislative Power 7

D. The Act Cannot Be Upheld Under the Criminal Law Power 8

E. The Act Cannot Be Upheld Under the Trade and Commerce Power 9

F. The Interveners' Other Arguments Do Not Provide a Basis for Determining Whether Parliament Has Jurisdiction to Enact the Act 10

PART VII – AUTHORITIES 11

PART I – OVERVIEW

1. Here and in the courts below, Canada has defended the *Greenhouse Gas Pollution Pricing Act* ("the Act") relying almost entirely on the national concern doctrine. The interveners' arguments on the national concern doctrine should be rejected: extra-provincial impacts, standing alone, are insufficient to transfer jurisdiction to the federal Parliament; and the national concern doctrine does not license the courts to assess the policy wisdom of provincial choices or the economic impact of federal legislation.

2. Canada now seeks to rely on any other potential head of power that an intervener might put forward. The interveners are not entitled to raise new issues.[1] If Canada wanted to support the Act using heads of power other than national concern, it should have done so itself.

3. None of the other heads of power raised by the interveners support the validity of the Act: Parliament did not purport to act on the basis of a national emergency and the Act is not temporary in nature; signing an international treaty does not give Parliament any power to legislate; the Act does not prohibit anyone from emitting greenhouse gases; the Act does not purport to regulate trade; and none of the other concepts raised by the interveners answer the question posed in this reference – did Parliament have jurisdiction to pass the Act?

PART II – FACTS

4. Contrary to the arguments of several of the interveners, the evidence does not demonstrate that carbon pricing is the only or an essential part of a plan to fight climate change. Rather, the evidence demonstrates that at most, carbon pricing is an economically efficient means of reducing greenhouse gas emissions. Other measures may be equally effective in

[1] Order of Wagner CJC dated December 4, 2019

reducing emissions, as Ontario's experience with closing coal-fired power plants demonstrates.[2]

5. After Ontario filed its appeal factum, Canada announced its intention to introduce further legislative measures to "set legally-binding, five-year emissions-reductions milestones" that will exceed current 2030 targets and lead towards net-zero emissions by 2050.[3]

PART III – ARGUMENT

A. The Interveners' National Concern Arguments Should Be Rejected

6. Some of the interveners submit that greenhouse gas emissions should be a matter of national concern because they have extra-provincial impacts or pose collective action problems. If, however, extra-provincial impacts, standing alone, were sufficient to make a matter one of national concern, there would be little provincial jurisdiction left in today's interconnected world. Almost all provincial decisions impact other provinces for better or for worse.

7. The risk of one province "free-riding" off another or facing a "collective action problem" is not sufficient to establish provincial inability. Indeed, Canadian provinces routinely co-operate to achieve positive nation-wide outcomes in other policy areas riddled with collective action problems, such as health care, securities regulation, and supply management. As argued in Ontario's main factum at paras 52-58, national concern jurisdiction should be reserved for matters the provinces are ***jurisdictionally*** incapable of regulating.

8. Since Confederation, the economic union of the provinces into one federation has meant that laws passed by one province can impact the other provinces, even if they are squarely aimed at activities taking place in the enacting jurisdiction. A province's minimum wage level may

---

[2] For a recent discussion of the options available, see Canada's Ecofiscal Commission, "Bridging the Gap: Real Options for Meeting Canada's 2030 GHG Target" (November 2019) at 15-30 submitted to the Alberta Court of Appeal and included in Alberta's proposed evidence.
[3] Mandate Letter from the Office of the Prime Minister to the Minister of Environment and Climate Change, 13 December 2019; Canada, House of Commons, 43rd Speech from the Throne (5 December 2019)

have impacts on the labour markets of other provinces. Its level of public services may attract residents of other provinces to relocate. Regulatory variability and policy experimentation among different provinces is a central feature of Canada's constitution, not a flaw to be fixed by expanding federal jurisdiction to include any matter with extra-provincial effects.

9. In the *Anti-Inflation Reference*, this Court held that the control of inflation was not appropriate for federal regulation under the national concern doctrine. Yet the very same arguments the interveners raise here would have applied to that case. One province's attempts to encourage the growth of its industries can drive prices and wages higher which can have an adverse impact on another province whose economy is struggling. Yet that potential extra-provincial impact was insufficient for this Court to give Parliament jurisdiction over the broad and diffuse swathes of human activity that cause wage and price inflation. It should not do so for the similar activities that cause greenhouse gas emissions.

10. Parliament can only regulate otherwise provincial activities insofar as they impact matters of federal concern. For example, Parliament can regulate the impact of a dam on fisheries or navigation as it did in *Oldman River*. When it goes further and seeks to price those otherwise provincial activities or assess their impact on broad and diffuse matters like climate change (as for example under its new *Impact Assessment Act*[4]), it goes too far.

11. Unlike the marine and freshwater pollution in *Crown Zellerbach*, no distinction can be drawn between the intra- and extra-provincial impacts of greenhouse gas emissions to allow separate spheres of regulation, since they arise in identical fashion from identical sources. If Canada's theory were accepted, paramount federal jurisdiction would apply to all local activities.

12. Oceans North's argument that provincial inability is established wherever "the costs and

---

[4] *Impact Assessment Act,* SC 2019, c 28, s. 1, s. 2*; Physical Activities Regulations,* SOR/2019-285, s. 2(1) and Sch. A (see "Oil, Gas and Other Fossil Fuels" and 'Renewable Energy")

benefits of [a regulated activity] are not evenly distributed"[5] between provinces invites this Court to opine on the merits of provincial policy choice in the impugned area, contrary to its repeated cautions that such an inquiry plays no role in division of powers analysis. The same is true of Ecofiscal's argument that the impact on provincial jurisdiction is minimal because the Act before the Court is intended to have minimal ***economic*** impact. That argument mistakenly assumes the *Crown Zellerbach* test is predominantly about economic impact and overlooks that the transfer of jurisdiction to Parliament would be permanent and not limited to the particular statute at issue.

B. The Act Cannot Be Upheld Under the Emergency Branch of POGG

13. Parliament did not purport to rely on the emergency doctrine in passing the Act. Even if it had, nothing about the Act indicates that it is intended to be temporary. As this Court has repeatedly held, the national emergency doctrine can only be invoked to support "legislation of a temporary nature."[6] The Court should not remove that essential requirement.

(1) The National Concern and Emergency Doctrines Should Remain Distinct

14. The national concern doctrine and the emergency doctrine are distinct doctrines, each with its own distinct tests developed to preserve jurisdictional balance in the federation. The two doctrines, and their respective tests, should not be blended.

15. The national concern doctrine results in the permanent addition of a new matter to the federal list of powers but its impact on provincial jurisdiction is limited by the requirement that the new matter must fall outside the provinces' enumerated powers – either because it did not exist at Confederation or because it has been so transformed as to effectively become a new matter. The emergency doctrine is much broader. It effects a wholesale ***transfer*** of ***existing*** provincial legislative powers to Parliament ***but only for the duration of the emergency***.

---

[5] Factum of the Intervener, Oceans North Conservation Society, at para 11.
[6] *R v Crown Zellerbach Canada Ltd,* [1988] 1 SCR 401 at 430; *Re Anti-Inflation Act,* [1976] 2 SCR 373 at 427 (*per* Laskin CJ), 437 (*per* Ritchie J), and 461 (*per* Beetz J)

16. Blending the distinct doctrines would fail to provide sufficient safeguards for the continued co-sovereignty of the provincial legislatures. It would lead to courts assigning matters to federal jurisdiction based solely on the court's view of the importance of particular federal policies, which this Court has repeatedly held to be impermissible. Both branches of POGG should remain distinct and predictable exceptions to the enumerated division of powers.

(2) Parliament Did Not Purport to Rely on the Emergency Doctrine

17. It is not sufficient for an intervener to argue that an emergency exists. There must be cogent evidence that ***Parliament*** intended to combat a national emergency at the time it passed the legislation. The debates the David Suzuki Foundation relies on took place in October 2018 and June 2019, months after the Act was passed in June 2018. The assessment of Parliament's intent must be based on events that took place before the Act was passed.[7] As is clear from the Act's legislative history, and as counsel for Canada acknowledged in argument below, Parliament did not purport to rely on the emergency doctrine at the time it passed the Act.

(3) The Emergency Doctrine Must Continue to Be Limited to Temporary Legislation

18. The temporary nature of the emergency doctrine is an essential safeguard to ensure a national emergency cannot result in the indefinite override of provincial legislative sovereignty. Unlike laws upheld under the national concern doctrine, a federal law can be upheld under the emergency doctrine no matter how much it intrudes on provincial jurisdiction. As this Court held in the *Anti-Inflation Reference*, "in practice the emergency doctrine operates as a partial and ***temporary*** alteration of the distribution of power between Parliament and the provincial Legislatures."[8] Such an alteration can only be made permanent by a constitutional amendment.

19. In emergency circumstances, the courts have been rightfully hesitant to second-guess

[7] *R v Big M Drug Mart Ltd,* [1985] 1 SCR 295 at 334-36
[8] *Anti-Inflation Reference*, *supra* at 427 (*per* Laskin CJ), 437 (*per* Ritchie J), 461 (*per* Beetz J)

determinations by the democratically-elected federal executive, acting under express delegation from Parliament, as to the exact duration of a given temporary emergency (although administrative law and constitutional limitations on such executive discretion clearly exist).[9] Emergency legislation which is truly intended to be temporary (even though no one can know in advance exactly how long the emergency will exist) should not be confused with permanent legislation such as the Act, which has no temporary features on its face, which makes no reference in its text or legislative history to the existence of an emergency, and which requires no declaration or determination by anyone that an emergency exists. No permanent legislation of this kind has ever been upheld under the emergency branch.

(4) The Act Is Not Temporary in Nature

20. Nothing about the Act suggests it is temporary. The Act's Preamble shows the Act is aimed at an ongoing problem requiring ongoing measures. It states "the pricing of greenhouse gas emissions on a basis ***that increases over time*** is an appropriate and efficient way to create incentives for […] behavioural change." It says that Canada has ratified the *Paris Agreement*, whose aim is "***holding*** the increase in the global average temperature to well below 2°C above pre-industrial levels." It adds that Canada is committed to achieving its contribution under the *Paris Agreement* "and ***increasing it over time***." [10] None of this language suggests Parliament sees greenhouse gas emissions as a temporary problem requiring temporary legislation.

21. The documents referred to in the Preamble also suggest the Act is intended to operate indefinitely. The Preamble states Canada has ratified the *United Nations Framework Convention on Climate Change* (the "Convention"), whose objective is "the ***stabilization*** of greenhouse gas concentrations." It is not known how long measures will be necessary to maintain such a

---

[9] *Fort Frances Pulp & Power Co Ltd v Manitoba Free Press Co Ltd,* [1923] AC 695 (PC)
[10] *Greenhouse Gas Pollution Pricing Act*, SC 2018, c 12, s. 186, Preamble [Emphasis added]

stabilization if achieved. The Convention itself sets no time limit on its operation.[11]

22. The *Paris Agreement* itself sets no end point on its operation and does not mention 2030 at all. Article 4, paragraph 3 of the *Paris Agreement* states that "[e]ach Party's successive nationally determined contribution will represent a progression beyond the Party's then nationally determined contribution." The *Paris Agreement* thus contemplates parties like Canada progressively making their greenhouse gas emission reduction targets more stringent over time, not merely addressing the issue temporarily.[12]

23. The charges the Act imposes are not set to end at any particular time. Schedule 2 sets out fuel charge rates that increase each year from 2018 to 2021, with even higher rates applicable "after 2021." Schedule 4 similarly sets out excess emission charge rates that increase each year from 2018 to 2022, with the 2022 rate applying to all subsequent years. The Governor in Council can increase both rates even further by regulation.[13]

24. Rather than demonstrating that it intends to end the Act's operation in the relatively near future, Canada has recently announced that it intends to set further emissions reduction milestones that will exceed current 2030 targets and lead to net-zero emissions by ***2050***.[14] There is no precedent for recognizing that legislation intended to have effect for at least ***30 years*** is sufficiently temporary in nature to be upheld under the emergency branch of POGG.

C. Treaties Do Not Give Parliament Any Greater Legislative Power

25. As the Privy Council held in *Labour Conventions* and this Court recently reaffirmed in

---

[11] *GGPPA*, *supra*, Preamble; Affidavit of John Moffet, Ex. H, *United Nations Framework Convention on Climate Change* (9 May 1992), Record of the Attorney General of Canada [Canada's Record], Vol. 2, Tab 1H [Emphasis added], Canada's Record, Vol. 2, Tab 1L, pp. 318-42

[12] Affidavit of John Moffet, Ex. I, *Paris Agreement* (12 December 2015), Art. 4 para. 3, Canada's Record, Vol. 2, Tab 1I, p. 366

[13] *GGPPA*, *supra*, ss. 166(4), 168(1), 168(2)(b) and (c), 168(3), 174(3)(b), 174(5), 178(2), 181(3), and 191 and Schs. 2 and 4

[14] Mandate Letter, *supra* at 2-3

the *Pan-Canadian Securities Reference*,[15] international treaties are binding on Canada in international law but can ***only*** be implemented domestically in spheres of provincial jurisdiction by way of provincial legislative enactment. If the federal executive wishes to fulfill its international obligations, it must convince the provincial legislatures to pass the necessary legislation by persuasion or incentives using the spending power. It cannot simply ask Parliament to legislate on the basis that treaty compliance is a matter of national concern.

26. The holding in *Labour Conventions* remains good law because it is necessary to sustain Canada's constitutional architecture. Unlike the constitutions of other federations, Canada's constitution does not give the federal Parliament an express power to implement treaties (save for the power to implement Imperial treaties).[16] The national concern doctrine should not be used to indirectly give Parliament the power to do what it cannot do directly.

27. Rather, in Canada, the power to legislate over all possible matters is divided between Parliament and the provincial legislatures by sections 91 to 94A of the *Constitution Act, 1867*. Since 1982, that division of powers can only be changed by a constitutional amendment under the general amending formula. The provinces must have a say in constitutional amendments that significantly affect their powers. The federal government cannot, by treaty, change the constitutional bargain without the provincial consent needed for a constitutional amendment.[17]

D. The Act Cannot Be Upheld Under the Criminal Law Power

28. The Act is not a valid exercise of Parliament's criminal law power. The Act lacks a

---

[15] 2018 SCC 48, [2018] 3 SCR 189
[16] *Reference re Senate Reform*, 2014 SCC 32 at paras. 26-27, [2014] 1 SCR 32; United States, *Constitution*, Art. II, §2, cl. 2 and Art. VI, §2; *Constitution* (Cth.), s. 51(xxix); *Constitution Act, 1867* (UK), 30&31 Vict., c. 3, s. 132
[17] *Constitution Act, 1867,* ss. 91-95; *Constitution Act, 1982*, s. 38, Schedule B to the Canada Act, 1982 (UK), 1982, c. 11; *Senate Reference, supra* at paras. 29-31

prohibition, a fundamental element of criminal law.[18] The Act does not prohibit greenhouse gas emissions in whole or in part. Persons subject to the Act are free to consume as much fuel or make as many products as they see fit, so long as they pay the charges the Act imposes.

29. Preventing people from engaging in certain activities for free is not a prohibition; it is a price. Accepting that legislation structured this way falls within Parliament's criminal law power would radically expand the scope of the power. On such a theory, Parliament could impose a price on any type of activity by "prohibiting" the free conduct of the activity.

30. Complex regulatory schemes have been upheld as valid exercises of Parliament's criminal law power. In each of those cases, however, there was an underlying prohibition of the activity being regulated, with exceptions which can at times be complex. By contrast, here, the prohibitions and penalties in the Act do not independently serve a valid criminal law purpose. They are confined to ensuring administrative compliance with the Act's pricing scheme.[19]

E. The Act Cannot Be Upheld Under the Trade and Commerce Power

31. The Act is not a valid exercise of Parliament's trade and commerce jurisdiction. As Canada itself admits, the Act is intended to regulate greenhouse gas emissions, not trade in goods or services. The emitting activities governed by the Act are the type of "day-to-day conduct" the provinces regulate.[20] Like the proposed federal legislation struck down in the 2011 *Securities Reference* and unlike that upheld in the 2018 *Pan-Canadian Securities Reference*, the Act does not confine itself to regulating only those aspects of greenhouse gas emissions that are ***qualitatively*** different from the local activities that the provinces can and long have regulated. Instead, it reaches beyond such matters and seeks to impose a price on almost ***all*** activities that

[18] *Quebec (AG) v Canada (AG)*, 2015 SCC 14 at para. 33, [2015] 1 SCR 693; *Reference re Firearms Act,* 2000 SCC 31 at para. 27, [2000] 1 SCR 783
[19] *Firearms Reference*, *supra* at paras. 38-39
[20] *General Motors of Canada Ltd v City National Leasing,* [1989] 1 SCR 641; *Reference re Securities Act*, 2011 SCC 66 at paras. 112-116, [2011] 3 SCR 837

cause greenhouse gas emissions, most of which have long been viewed as provincial.[21]

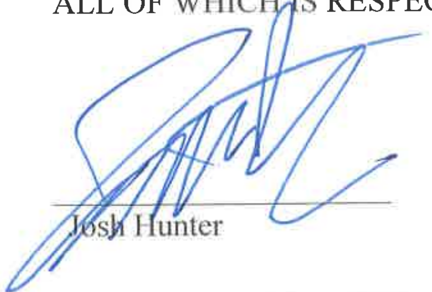
F. The Interveners' Other Arguments Do Not Provide a Basis for Determining Whether Parliament Has Jurisdiction to Enact the Act

32. The interveners attempt to support federal jurisdiction by referring to a variety of legal doctrines, including the Honour of the Crown, section 35 of the *Constitution Act, 1982*, and section 7 of the *Charter*. Under our Constitution, none of these doctrines has a role in determining which level of government can pass a particular law.

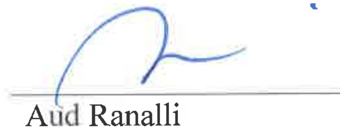
33. It is not appropriate for this Court to rule on whether section 7 of the *Charter* imposes positive duties on governments when the issue was raised for the first time by an intervenor on appeal. There is insufficient evidence on the record to provide a factual matrix.[22] In any event, *Charter* rights apply to both Parliament and the provincial legislatures. Section 7 does not answer which has jurisdiction over a particular matter.

34. Similarly, neither section 35 nor the Honour of the Crown determine whether Parliament has jurisdiction to enact the Act. Both Canada and the provinces are constitutionally required to respect section 35 rights and act in accordance with the Honour of the Crown within their respective spheres of action. If a specific federal or provincial decision is said to engage section 35 or the Honour of the Crown, it can be challenged in an appropriate proceeding.[23]

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 10TH DAY OF FEBRUARY, 2020


Josh Hunter

Padraic Ryan


Aud Ranalli

[21] *Securities Reference*, *supra* at paras. 70, 79, and 113-14; *Pan-Canadian Securities Reference*, *supra* at paras. 107 and 110-12
[22] *Danson v Ontario (Attorney General),* [1990] 2 SCR 1086 at 1099-1011
[23] *Manitoba Metis Federation Inc v Canada (Attorney General),* 2013 SCC 14 at para. 69, [2013] 1 SCR 623

PART VII – AUTHORITIES

JURISPRUDENCE	**Paragraph(s) Referred to in Factum**
Danson v Ontario (Attorney General), [1990] 2 SCR 1086	33
Fort Frances Pulp & Power Co Ltd v Manitoba Free Press Co Ltd, [1923] AC 695 (PC)	19
General Motors of Canada Ltd v City National Leasing, [1989] 1 SCR 641	31
Manitoba Metis Federation Inc v Canada (Attorney General), 2013 SCC 14, [2013] 1 SCR 623	34
Pan-Canadian Securities Reference, 2018 SCC 48, [2018] 3 SCR 189	25, 31
Quebec (AG) v Canada (AG), 2015 SCC 14, [2015] 1 SCR 693	28
R v Big M Drug Mart Ltd, [1985] 1 SCR 295	17
R v Crown Zellerbach Canada Ltd, [1988] 1 SCR 401	13
Re Anti-Inflation Act, [1976] 2 SCR 373	13, 18
Reference re Firearms Act, 2000 SCC 31, [2000] 1 SCR 783	28, 30
Reference re Securities Act, 2011 SCC 66, [2011] 3 SCR 837	31
Reference re Senate Reform, 2014 SCC 32, [2014] 1 SCR 32	26, 27

LEGISLATION	**Paragraph(s) Referred to in Factum**
Constitution (Cth.), s. 51(xxix)	26
Constitution Act, 1867 (UK), 30&31 Vict., c. 3, s. 132 English: ss. 91-95 Français : arts. 91-95	26, 27

LEGISLATION	Paragraph(s) Referred to in Factum
Constitution Act, 1982, Schedule B to the Canada Act, 1982 (UK), 1982, c. 11 English: s. 38 Français : art. 38	27
Greenhouse Gas Pollution Pricing Act, SC 2018, c 12, s. 186 English: Preamble, ss. 166(4), 168(1), 168(2)(b)-(c), 168(3), 174(3)(b), 174(5), 178(2), 181(3), 191, Schedules 2, 4 Français: Préambule, arts. 166(4), 168(1), 168(2)(b)-(c), 168(3), 174(3)(b), 174(5), 178(2), 181(3), 191, Annexes 2, 4	20, 21, 23
Impact Assessment Act, SC 2019, c 28, s. 1 English: s. 2 Français : art. 2	10
Physical Activities Regulations, SOR/2019-285 English: s. 2(1), Schedule A (see "Oil, Gas and Other Fossil Fuels" and "Renewable Energy") Français : arts. 2(1), Annexe A ("Pétrole, gaz et autres combustibles fossiles" et "Énergie renouvelable")	10
United States, *Constitution*, Art. II, §2, cl. 2 and Art. VI, §2	26

SECONDARY SOURCES	Paragraph(s) Referred to in Factum
Canada, House of Commons, 43rd Speech from the Throne (5 December 2019)	4
Canada's Ecofiscal Commission, "Bridging the Gap: Real Options for Meeting Canada's 2030 GHG Target" (November 2019)	4
Mandate Letter from the Office of the Prime Minister to the Minister of Environment and Climate Change, 13 December 2019	4, 24