

**IN THE SUPREME COURT OF CANADA  
(ON APPEAL FROM THE 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**

BETWEEN:

**ATTORNEY GENERAL OF SASKATCHEWAN**

**APPELLANT**

-and-

**ATTORNEY GENERAL OF CANADA**

**RESPONDENT**

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*(Pursuant to Rule 42 of the Rules of the Supreme Court of Canada)*

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*(Style of Cause continued on next page)*

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**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  
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## **PART I: OVERVIEW OF POSITION AND STATEMENT OF FACTS**

1. **Overview.** IETA is a non-profit, business and industry organization that has been a leading global business voice on carbon pricing and climate finance for nearly two decades.<sup>1</sup> It has over 150 Canadian and international members that span the mining, oil and gas, electricity, utilities, finance, trading, and manufacturing sectors.<sup>2</sup> Many of IETA's members are greenhouse gas (**GHG**) emitters, directly regulated by the federal *Greenhouse Gas Pollution Pricing Act* (the **Act**) and/or applicable provincial carbon pricing regimes.<sup>3</sup> All of IETA's members support carbon pricing to meaningfully address the systemic economic/business risks of climate change.<sup>4</sup>

2. Climate change is not only a pressing and serious environmental risk. It is a very significant systemic business competitiveness and economic risk.<sup>5</sup> The Act is, in pith and substance, a ***GHG emissions pricing and trading regime that establishes minimum national price stringency standards in order to address the systemic risk of climate change in accordance with the Paris Agreement.*** The Act, so characterized, is a valid exercise of the federal trade and commerce power (s. 91(2) of the *Constitution Act, 1867* (the **Constitution**)). Alternatively, the Act is validly classified in relation to the criminal law power (s. 91(27) of the *Constitution*) and we adopt the corresponding submissions of the Canadian Environmental Law Association, Environmental Defence Canada Inc., and Sisters of Providence of St. Vincent de Paul (**CELA**).

3. Except where otherwise stated, IETA generally agrees with the facts set out in paragraphs 8 through 50, 52 and 53 of Canada's Factum<sup>6</sup> and provides the following additional relevant

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<sup>1</sup> Motion Record of the Proposed Intervener, International Emissions Trading Association, Tab 2, Affidavit of Kathleen Eleanor Sullivan, sworn November 5, 2019, at paras 4, 8 [**Sullivan Affidavit**].

<sup>2</sup> Sullivan Affidavit at para 4.

<sup>3</sup> Sullivan Affidavit at para 5.

<sup>4</sup> Sullivan Affidavit at para 5.

<sup>5</sup> Factum of the Respondent, the Attorney General of Canada at para 22 [**Canada's Factum**]; Sullivan Affidavit at paras 7, 9; Record of the Respondent, the Attorney General of Canada [**CR**], Vol 1, Tab 1, Affidavit of John Moffet, affirmed January 29, 2019, at para 50, Ex M [**Moffet Affidavit**].

<sup>6</sup> IETA notes that paragraphs 23 and 24 of Canada's Factum were not updated to reflect the data in Ministry of Environment and Climate Change, [Canada's 2019 National Inventory Report, 1990–2017: Greenhouse Gas Sources and Sinks in Canada, Canada's Submission to the](#)



clarifications.<sup>7</sup>

4. **Facts.** It is uncontroverted that the Act, summarized in Table 1, below, sets out a general, comprehensive, national GHG emissions pricing and trading regulatory scheme, which is overseen by the Minister of Environment and Climate Change and Minister of National Revenue.

5. The Act implements Canadian economy-wide, minimum national carbon pricing standards on the national economy to address the systemic risk of climate change, which apply only if a province does not meet equivalent stringency. It does not regulate all GHGs from all activities, all gases, or target a particular industry.<sup>8</sup>

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[United Nations Framework Convention on Climate Change](#), April 2019 [2019 NIR] on emissions between 1990 and 2017. These estimates show that Canada's 2017 GHG emissions decreased by 2.0% (15 Mt CO<sub>2</sub>e) from 2005 but increased since 1990. Under the 2019 NIR, Canada's 2030 target is 511 Mt CO<sub>2</sub>e, 205 Mt CO<sub>2</sub>e less than 2017 emissions (716 Mt CO<sub>2</sub>e). From 2005 to 2017, GHG emissions increased in Alberta, Saskatchewan, Manitoba, Newfoundland and Labrador, and Nunavut, while emissions decreased in British Columbia, Ontario, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Northwest Territories, and Yukon. Alberta's and Saskatchewan's GHG emissions increased by both the largest percentage and the largest amount during the 2005-2017 period. Over the that period, Saskatchewan's GHG emissions increased by 14% (10 Mt CO<sub>2</sub>e) to 78 Mt CO<sub>2</sub>e in 2017. Alberta's GHG emissions increased by 18% (42 Mt CO<sub>2</sub>e) to 273 Mt CO<sub>2</sub>e in 2017. Ontario's emissions decreased by 22% (45 Mt CO<sub>2</sub>e), primarily due to the closure of coal-fired electricity generation plants.

<sup>7</sup> IETA does not fully agree with the facts set out in paragraphs 7-16 of the Factum of the Appellant/Intervener, the Attorney General of Saskatchewan [**Saskatchewan's Factum**], and paragraphs 16, 20-24, 29 and 30 of the Factum of the Appellant/Intervener, the Attorney General of Ontario [**Ontario's Factum**].

<sup>8</sup> [SOR/2019-266](#), (Output-Based Pricing System Regulations), Schedule 1 (regulated industrial activities include oil and gas production (extraction, processing production); mineral processing; chemicals; pharmaceuticals; iron, steel and metal tubes; mining and ore processing; nitrogen fertilizers; food processing; pulp and paper; automotive; electricity generation, with fossil fuels in other sectors covered by the fuel charge in Part 1 of the Act).

**Table 1. Summary of the Act**

<b>Key Provision(s)</b>	<b>Section(s)</b>	<b>Summary</b>
<b>Price on fuel deliveries by distributors</b>	17(1); 18(1); 19(1)-(2)	<b>Price</b> on GHG emissions from fuel delivered to person or used by a distributor in, or imported into, a listed province. <b>Price</b> determined under s. 40, escalating to \$50/tonne by 2023.
<b>Pricing and compliance trading (OBPS)</b>	174(1)-(2), 175	Obligation to <b>pay a price</b> for GHGs emitted at covered facility that are above an applicable <b>minimum stringency standard</b> or benchmark set for each industrial sector. Payments may be avoided/mitigated through a <b>flexible compliance trading regime</b> that includes: <ul style="list-style-type: none"> <li>• earning, creating, <b>trading</b>, or purchasing and remitting <i>credits</i> awarded to facilities emitting less than applicable <b>minimum GHG standard</b> set through <b>three-phase analysis of the systemic risks of carbon leakage and trade competitiveness</b><sup>9</sup></li> <li>• <b>trading</b>, or purchasing and remitting <i>offsets</i> from entities reducing GHG emissions outside of covered facilities;</li> <li>• paying <b>minimum stipulated price</b> for excess GHG emissions charge (same as applicable <b>fuel emission price</b>); or</li> <li>• a combination of these <b>flexible pricing and trading mechanisms</b>.</li> </ul>
<b>Prohibitions and Penalties</b>	132; 133(2); 135; 136; 232-233	Prohibitions and penalties for failure to file or make return when required, failure to pay all or part of applicable <b>price</b> , failure to comply with specific <b>pricing or compliance/trading obligations</b> or other provisions set out in Act. Range of punishments similar to those set out in <i>Canadian Environmental Protection Act</i> .
<b>Trading (compliance units)</b>	192(1);	Regulations address compliance units, including <b>trading</b> of compliance units, offsets, circumstances under which <b>trading</b> of compliance units are prohibited and recognition of units or credits issued by a person other than Minister.
<b>Accounts for Tracking and Trading Stringency</b>	186(1), 165(2), 188(1) 166(2)-(3) and 189(1)-(2)	Covered facility must have account in compliance tracking system; other persons may have accounts in compliance tracking system for purpose of <b>trading</b> compliance units. Regulation or order may amend list of provinces and territories for purposes of fuel charge and OBPS. In making regulation or order, must take into account as the primary factor, the <b>minimum national standards</b> and the <b>stringency of provincial pricing mechanisms for GHG emissions</b> . Stringency test based on provincial GHG emissions <b>price, scope of coverage</b> and/or the consistency with Canada's <i>Paris Agreement</i> commitment (30% reduction from 2005 by 2030).

<sup>9</sup> Canada's Factum at para 43; Moffet Affidavit at paras 106, 107, 111, 113, 117, 127, 128; CR, Vol 4, Tab 3, Affidavit of Warren Goodlet, affirmed January 29, 2019, at para 5.

6. Canada and the provinces have been working on carbon pricing since the ratification of the United Nations Framework Convention on Climate Change (UNFCCC) in 1994, subsequent protocols in 2002, and 2009, and the *Paris Agreement* in 2015. In the 25-year period since UNFCCC ratification, many of Canada’s provinces acting jointly or severally have attempted to achieve coordinated, minimum regional or national standards for GHG emissions pricing and have not been successful.<sup>10</sup> A number of provinces have enacted valid, provincially-specific climate legislation and carbon pricing schemes, which have resulted in some reductions of GHG emissions in certain provinces. Alberta and Saskatchewan now have limited carbon pricing schemes,<sup>11</sup> but their GHG emissions have continued to increase.<sup>12</sup> Ontario also has a legislated carbon pricing scheme, but the Auditor General of Ontario has recently determined that Ontario’s climate plan is “not yet supported by sound evidence” and may be insufficient to meet Ontario’s less ambitious, revised GHG reduction target.<sup>13</sup> In the absence of minimum national standards for GHG price stringency, GHG emissions in Canada have increased during the period since 1994.<sup>14</sup>

7. Climate change is not only a pressing and serious environmental risk. It is a very significant, systemic business and economic risk that has resulted in the preponderance of central banks, insurance companies, pension and investment funds, and accounting standards boards around the world advocating for economy-wide carbon pricing. These systemic business and trade competitiveness risks are increasing. The European Commission recently announced a “border carbon adjustment” to be applied to higher GHG emission goods and/or countries that do not comply with their obligations under the Paris Agreement.<sup>15</sup>

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<sup>10</sup> Friends of the Former National Round Table on the Environment and the Economy, “[NRT: Canada’s Round Table – History](#)” (last modified February 19, 2013); see also [Climate Change Mitigation and Low-carbon Economy Act, 2016](#), SO 2016, c. 7, as repealed by [Cap and Trade Cancellation Act, 2018](#), SO 2018, c. 13; [O Reg 144/16](#) (The Cap and Trade Program) as revoked by [O Reg 386/18](#); [QCLR c Q-2, r 46.1](#) (Regulation respecting a cap-and-trade system for greenhouse gas emission allowances).

<sup>11</sup> Canada’s Factum at para 46; Saskatchewan’s Factum at paras 11-13.

<sup>12</sup> See *supra* note 6.

<sup>13</sup> Ontario’s Factum at paras 18-21; Office of the Auditor General of Ontario, [News Release: “Province’s Plan to Address Climate Change Not Yet Supported by Sound Evidence: Auditor General”](#), December 4, 2019.

<sup>14</sup> 2019 NIR, *supra* note 6 at 3-4.

<sup>15</sup> European Commission, [Communication from the Commission: The European Green Deal](#), COM(2019) 640 final, December 11, 2019.

8. Further, provinces that have unilaterally implemented meaningful carbon pricing have experienced trade and competitiveness impacts. Richards, CJS acknowledged that trade and competitiveness pressures attributed to inconsistent or non-existent carbon pricing in some provinces are significant in certain sectors (citing evidence filed by the Attorney General of British Columbia).<sup>16</sup>

## **PART II: POSITION ON THE APPELLANTS' QUESTIONS**

9. The questions in issue are: **(i)** Is the Act unconstitutional in whole or in part? and **(ii)** Does the Act impose valid regulatory charges or valid taxation? IETA submits that the answer to the first question is no. Parts 1 and 2 of the Act are *intra vires* Parliament based on: (a) the trade and commerce power or, alternatively, (b) the criminal law power (as argued by CELA). IETA adopts Canada's submissions in relation to the second question.

## **PART III: STATEMENT OF ARGUMENT**

10. **Requisite Test.** These appeals turn on the mandatory pith and substance analysis, which requires **first** characterizing the law's dominant characteristic **then** considering whether, so characterized, it can be classified/assigned to one of the government's heads of legislative power.<sup>17</sup> The Court's discretion in *characterizing* a law is not unduly limited and may include consideration of its purpose and effects, and practical and legal consequences.<sup>18</sup> Characterization must: (a) be precise;<sup>19</sup> (b) occur before application of other constitutional doctrines;<sup>20</sup> and (c) be thorough as it is often determinative of constitutional validity. Where the choice between competing characterization is not clear, the Court is urged to favour the characterization that supports the validity of the law.<sup>21</sup> The Appellants deviate from the requisite test in support of a new approach for the national concern doctrine, which is not supported by law. The requisite test supports a narrow characterization that may be validly classified under the general trade and commerce power.

11. **Characterization.** An examination of the pith and substance of the Act and its purpose and

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<sup>16</sup> [Reference re Greenhouse Gas Pollution Pricing Act](#), 2019 SKCA 40 at para 155.

<sup>17</sup> [R v Hydro-Québec](#), [1997] 3 SCR 213 at para 23.

<sup>18</sup> [Rogers Communications Inc v Châteauguay \(City\)](#), 2016 SCC 23 at para 36. [**Rogers**].

<sup>19</sup> [Desgagnés Transport Inc v Wärtsilä Canada Inc](#), 2019 SCC 58 at paras 35-36.

<sup>20</sup> [Rogers](#) at para 35.

<sup>21</sup> [Rogers](#) at para 82.

effect supports a precise and narrow characterization of the matter of the Act consistent with the majority reasons of Richards, CJS in *Reference re Greenhouse Gas Pollution Pricing Act* (Saskatchewan)<sup>22</sup> and the concurring reasons of Hoy, ACJO in the *Reference re Greenhouse Gas Pollution Pricing Act* (Ontario)].<sup>23</sup> The purpose of the Act is reflected in the preamble, which speaks to addressing the *unprecedented risk to [...] economic prosperity, accelerating clean economic growth, and the significant deleterious effects on [...] economy prosperity* that may result from the absence of GHG emissions pricing in some provinces and a lack of stringency in some provincial GHG emissions pricing systems.<sup>24</sup>

12. The essential character of the Act may also be gleaned from its express provisions and effects. IETA generally agrees with the analysis at paragraphs 56 through 64 of Canada's Factum. The Act facilitates nationally consistent minimum standards and provincially flexible means to achieve the end goal of reducing Canada-wide GHG emissions to address the systemic economic risks of climate change. It does so by: (i) putting a **price** on the GHG emissions associated with the delivery, use, and import of fossil fuels, and resulting from industrial emissions that exceed minimum national sectoral benchmarks and (ii) establishing a flexible compliance **trading** regime that incents GHG emission reductions from within and outside of industry, while protecting the **trade competitiveness** of industry. The Act addresses the systemic economic risks of climate change in accordance with Canada's commitments under the Paris Agreement.

13. Saskatchewan, Ontario, and Canada confirm the essential trade and competitiveness nature of the Act, accommodations for emissions-intensive and trade-exposed (**EITE**) sectors, and 'carbon leakage' through inter-provincial and international trade.<sup>25</sup> In fact, Canada highlights the three-phase trade and competitiveness analysis that supports the setting of minimum national standards for GHG pricing stringency and economy-wide carbon pricing.<sup>26</sup> The resulting system of GHG emissions pricing and trading is also consistent with Canada's obligations under the Paris Agreement. The gestalt purpose and effect of the Act is therefore to establish a ***GHG emissions pricing and trading regime that establishes minimum national price stringency standards in***

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<sup>22</sup> [Reference re Greenhouse Gas Pollution Pricing Act](#), 2019 SKCA 40.

<sup>23</sup> [Reference re Greenhouse Gas Pollution Pricing Act](#), 2019 ONCA 544.

<sup>24</sup> [Greenhouse Gas Pollution Pricing Act](#), SC 2018, c 12, s 186, Preamble.

<sup>25</sup> Canada's Factum at paras 27, 41-43, 60, 63, 101, 105; Saskatchewan's Factum at para 87; Ontario's Factum at para 20.

<sup>26</sup> Canada's Factum at para 43.

*order to address the systemic risk of climate change in accordance with the Paris Agreement.*

14. **Classification.** The essential character of Act, so characterized, can be classified as validly in relation to Parliament’s jurisdiction over general trade and commerce as set out in s. 91(2) of the *Constitution* and further elucidated by this Court. The Act meets all five indicia of the general trade competence as set out by Dickson CJ in *General Motors*, and applied by this Court in the *Securities Reference* and the *Pan-Canadian Securities Reference*.<sup>27</sup>

15. First, it is uncontroverted that the Act, summarized in Table 1, above, sets out a comprehensive GHG emissions pricing and trading regulatory scheme. The regulatory scheme includes economy-wide fuel charges and minimum national standards for GHG emissions price stringency in order to reduce GHG emissions in a manner that protects trade competitiveness and addresses the systemic economic risks of climate change. It stipulates to whom, how, what and when it will apply and provides detailed rules for registration, monitoring, trading, and compliance. It therefore meets all hallmarks of a general regulatory scheme.

16. Second, the Act is overseen and monitored by the Minister of Environment and Climate Change and the Minister of National Revenue. The fuel charges are administered through the Minister of National Revenue. The OBPS, the emissions trading, compliance activities, and the related trading, tracking and monitoring accounts, and penalties are administered by the Minister of Environment and Climate Change, who is also responsible for Canada’s compliance with its Paris Agreement obligations.

17. Third, the Act, consistent with the *Securities Reference* and the *Pan-Canadian Reference*, imposes minimum national GHG pricing standards applicable throughout the country and is intended to preserve the competitiveness and thereby the stability and integrity of Canada’s business and industry and, in particular, EITE industries. The Act applies economy-wide to a broad range of entities. It does not single out a particular industry or sector or descend into all aspects of trading or commercial activity in those sectors. It is a law of general application that is limited to regulate the systemic economic risks of climate change that are a material threat to Canada’s trade

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<sup>27</sup> [General Motors of Canada Ltd v City National Leasing](#), [1989] 1 SCR 641 at 661 [*General Motors*]; [Reference re Securities Act](#), 2011 SCC 66 at paras 80-81 [*Securities Reference*]; [Reference re Pan-Canadian Securities Regulation](#), 2018 SCC 48 at paras 103-104 [*Pan-Canadian Securities Reference*].

and competitiveness in a way that transcends the concerns of any one province.<sup>28</sup> It therefore relates to trade as a whole.

18. Further, climate change and decreasing GHG emissions through an efficient, lower-cost system of GHG emissions pricing and trading consistent with Canada's Paris Agreement obligations is a matter of genuine national importance and scope. That matter goes to trade as a whole in a way that is distinct from provincial concerns. Canada's EITE sectors facing trade competitiveness challenges need minimum national standards for GHG emissions price stringency policy and the resulting consistency and certainty in order to address leakage and competitiveness, make long-term investment decisions, and undertake prudent business planning.<sup>29</sup>

19. Fourth, in the 25 years that have now followed the ratification of the UNFCCC, the provinces acting together or alone have attempted, but have been unable, to enact and sustain a national system of minimum national standards for GHG emissions pricing and trading, or otherwise address the trade and economic issues associated with reducing Canada's GHG emissions. In the last 25 years Canada-wide emissions have increased, as have climate-related business and competitiveness challenges and obligations. While the provinces may validly enact provincial carbon pricing and trading legislation (and many have), they may also resile from that legislation (both Ontario and Alberta have). The Court has found that such an ability to resile from a viable national scheme aimed at the genuine national goal of managing systemic economic risk was, alone, determinative of provincial inability.<sup>30</sup>

20. The 25 years of provincial attempts and failures to effect minimum national GHG pricing standards to address the systemic economic risk of climate change, further supports provincial inability to do so — and demonstrates that the Act is *qualitatively different from anything that could practically or constitutionally be enacted by the individual provinces either separately or in combination*.<sup>31</sup> The provinces have not and cannot, either jointly or severally, enact minimum national standards for GHG emissions price stringency, an inter-provincial compliance trading regime, and a system of national accounts and monitoring that is aimed at addressing the systemic trade and competitiveness risks of climate change for Canada as a whole. The minimum national

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<sup>28</sup> [Pan-Canadian Securities Reference](#) at para 111.

<sup>29</sup> Sullivan Affidavit at paras 7, 9.

<sup>30</sup> [Securities Reference](#) at para 121; [Pan-Canadian Securities Reference](#) at para 113.

<sup>31</sup> [Pan-Canadian Securities Reference](#) at para 101.

carbon pricing and trading standards set out in the Act are not, and cannot be, contingent on the actions of any one province in order to be effective, *even though* the provinces are also competent to deal with climate change in the exercise of their legislative powers.

21. The nation-wide system of minimum national standards in the Act is respectful of, but not contingent on, the legislative actions, individual transactions, specific industries or local markets in any one province. The Act, when viewed in its entirety, addresses the systemic risks of climate change, trade, and competitiveness to the economy as a whole in a way that is different and distinct from provincial concerns. The absence of a federal power to legislate in respect of national minimum pricing and trading standards to address the systemic economic risks of climate change would create a constitutional “gap” that is contrary to the principle of exhaustiveness and Canada’s global climate obligations.<sup>32</sup> The Act, with its narrowly tailored scope and backstop, is a response to this provincial incapacity and fills the constitutional gap.<sup>33</sup>

22. Finally, the Attorney General of British Columbia has confirmed that in its direct experience, the failure to include one or more of the provinces in the carbon pricing and industrial emissions trading system included in the Act would jeopardize its successful operation in other parts of the country. The impacts of ‘carbon leakage’ were significant in some sectors.<sup>34</sup> This is, in fact, evidence of systemic risk, or the ‘domino effect’ where one province’s failures result in negative economic consequences that pervade the entire system.<sup>35</sup> The effective management of the systemic economic risks of climate change requires nation-wide regulation.

23. In summary, the Act meets all five of the indicia for valid classification under the general trade and commerce power. The fact that the federal government’s foray into carbon pricing under the Act is limited to minimal national GHG pricing standards to address the systemic economic risks of climate change through a cooperative backstop approach with the provinces supports its validity. This classification is not only appropriate, but consistent with the approach of Saskatchewan, Ontario, and Canada, who rely upon the trade jurisprudence to support their

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<sup>32</sup> [Pan-Canadian Securities Reference](#) at para 102.

<sup>33</sup> [Pan-Canadian Securities Reference](#) at para 113.

<sup>34</sup> [Reference re Greenhouse Gas Pollution Pricing Act](#), 2019 SKCA 40 at para 155.

<sup>35</sup> [Pan-Canadian Securities Reference](#) at para 107.



analysis.<sup>36</sup>

24. IETA notes that it was open to the Attorneys General of Saskatchewan and Ontario to adduce evidence and argue that the Act *impairs the core elements* of an expressly enumerated area of exclusive provincial jurisdiction, or unnecessarily encroaches upon a provincial carbon pricing regime of greater GHG-reducing stringency.<sup>37</sup> None has, nor does the record support such a conclusion. This absence of evidence is telling and indicative of the fact that the Act and its minimum national standards for carbon pricing and trading is a law of general application that is reconcilable with any incidental effects that it may have on provincial powers over property and civil rights and matters of a merely local nature. Interpreting the trade and commerce power to include minimum national carbon pricing and trading standards does not appear to have overwhelmed provincial authority.<sup>38</sup> However, an unduly narrow interpretation of the general trade and commerce power that excludes the systemic economic risks of climate change — among the world’s most significant risks and challenges<sup>39</sup> — may result in a significant gap that may leave the general trade and commerce power vapid and meaningless to address other less urgent and pervasive systemic risks as previously supported by the Court.<sup>40</sup>

25. **Criminal Law Power.** IETA submits, in the alternative, that the Act is a constitutional exercise of Parliament’s criminal law power pursuant to s. 91(27) of the *Constitution* and adopts the submissions of CELA.

#### **PART IV: SUBMISSIONS CONCERNING COSTS**

26. IETA does not seek costs and requests that no costs be awarded against IETA.

#### **PART V: ORDER SOUGHT**

27. IETA makes no statement on the outcome of the appeals.

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<sup>36</sup> Canada’s Factum at paras 55-56, 59, 68, 70, 76-77, 87, 92-96, 110, 111, 122; Saskatchewan’s Factum at paras 54, 94, 102, 107, 111-113, 121; Ontario’s Factum at paras 33, 47, 54-55, 74, 85-88.

<sup>37</sup> [\*Canadian Western Bank v Alberta\*](#), 2007 SCC 22 at paras 48-49.

<sup>38</sup> [\*Reference re Greenhouse Gas Pollution Pricing Act\*](#), 2019 SKCA 40 at para 342.

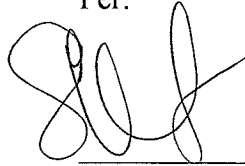
<sup>39</sup> Saskatchewan’s Factum at para 2.

<sup>40</sup> [\*Pan-Canadian Securities Reference\*](#) at para 100-101.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**, this 27<sup>th</sup> day of January, 2020.

**DEMARCO ALLAN LLP**

Per:



for:

\_\_\_\_\_  
Lisa (Elisabeth) DeMarco  
Counsel for IETA

for:

\_\_\_\_\_  
Jonathan McGillivray  
Counsel for IETA

**PART VI:  
TABLE OF AUTHORITIES**

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2. <a href="#"><i>Desgagnés Transport Inc v Wärtsilä Canada Inc</i></a> , 2019 SCC 58	10
3. <a href="#"><i>General Motors of Canada Ltd v City National Leasing</i></a> , [1989] 1 SCR 641	14
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5. <a href="#"><i>Reference re Greenhouse Gas Pollution Pricing Act</i></a> , 2019 SKCA 40	8, 11, 22, 24
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