COURT OF APPEAL OF ALBERTA

Form AP-**5**
[Rule 14.87]

COURT OF APPEAL FILE NUMBER: 1903-0157-AC

REGISTRY OFFICE: Edmonton

Registrar's Stamp

REGISTRAR
FILED
25 Oct 2019
RH
Court of Appeal of Alberta

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

AND

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

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

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

FACTUM OF THE ATTORNEY GENERAL OF CANADA

ATTORNEY GENERAL OF CANADA
Department of Justice Canada
Prairie Region
301 – 310 Broadway
Winnipeg, MB R3C 0S6
Per: Sharlene Telles-Langdon, Christine Mohr, Mary Matthews,
Neil Goodridge, Ned Djordjevic, and Beth Tait
Phone: 204-983-0862
Fax: 204-984-8495
E-mail: sharlene.telles-langdon@justice.gc.ca
Counsel for the Attorney General of Canada

CONTACT INFORMATION OF ALL OTHER PARTIES:

Counsel for the Attorney General of Alberta

Peter A. Gall, Q.C. and Benjamin Oliphant
Gall Legge Grant Zwack LLP
Suite 1000
1199 W. Hastings St.
Vancouver, BC V6E 3T5
Tel: 604-891-1152
Fax: 604-669-5101
Email: pgall@glgzlaw.com
boliphant@glgzlaw.com

Ryan Martin and Steven Dollansky
McLennan Ross LLP
600, 12220 Stony Plain Road
Edmonton, AB T5N 3Y4
Tel: 780-482-9217
Fax: 780-482-9100
Email : rmartin@mross.com
sdollansky@mross.com

L. Christine Enns, Q.C.
Department of Justice and Solicitor General
10th Floor, Oxford Tower
10025 – 102A Avenue
Edmonton, AB T5J 2Z2
Tel : 780-422-9703
Fax : 780-638-0852
Email: Christine.Enns@gov.ab.ca

Counsel for the Intervenor, Attorney General of British Columbia

J. Gareth Morley and Jacqueline D. Hughes
Ministry of Justice of British Columbia
6th Floor – 1001 Douglas Street
PO Box 9280, STN PROV GOVT
Victoria, BC V7W 9J7
Tel: 250-952-7644
Fax: 250-356-9154
Email: gareth.morley@gov.bc.ca
jacqueline.hughes@gov.bc.ca

Counsel for the Intervenor, the Attorney General of New Brunswick	William E. Gould Justice and Office of the Attorney General Chancery Place 675 King Street, Room 2078, Floor 2 PO Box 6000 Fredericton, NB E3B 5H1 Tel: 506-462-5100 Fax: 506-453-3275 Email : william.gould@gnb.ca
Counsel for the Intervenor, the Attorney General of Ontario	Joshua Hunter, Padraic Ryan and Aud Ranalli Attorney General of Ontario Constitutional Law Branch 4th Floor – 720 Bay Street Toronto, ON M7A 2S9 Tel: 416-908-7465 Fax: 416-326-4015 Email : joshua.hunter@ontario.ca padraic.ryan@ontario.ca aud.ranalli@ontario.ca
Counsel for the Intervenor, the Attorney General of Saskatchewan	P. Mitch McAdam, Q.C. and Alan Jacobson Ministry of Justice, Constitutional Law 820 – 1874 Scarth Street Regina, SK S4P 4B3 Tel: 306-787-7846 Fax: 306-787-9111 Email : mitch.mcadam@gov.sk.ca alan.jacobson@gov.sk.ca
Counsel for the Intervenor, Assembly of First Nations	Stuart Wuttke and Adam Williamson Assembly of First Nations 55 Metcalfe Street, Suite 1600 Ottawa, ON K1P 6L5 Tel: 613-241-6789 Fax: 613-241-5808 Email : swuttke@afn.ca awilliamson@afn.ca

Counsel for the Intervenor,
Athabasca Chipewyan First Nation

Amir Attaran
Ecojustice Environmental Law Clinic
University of Ottawa, Faculty of Law
Common Law Section
57 Louis Pasteur
Ottawa, ON K1N 6N5
Tel: 613-562-5794
Fax: 613-562-5124
Email: aattaran@ecojustice.ca

Matt Hulse
Woodward & Company Lawyers LLP
1022 Government Street, Suite 200
Victoria, BC V8W 1X7
Tel: 250-383-2356
Fax: 250-380-5650
Email: mhulse@woodwardandcompany.com

Counsel for the Intervenor,
Canada's Ecosfiscal Commission

Stewart Elgie
Canada's Ecofiscal Commission
University of Ottawa,
Faculty of Law (Common Law)
57 Louis Pasteur
Ottawa, ON K1N 6N5
Email: stewart.elgie@uottawa.ca

Counsel for the Intervenor,
Canadian Public Health Association

Jennifer L. King
Gowling WLG (Canada) LLP
Suite 1600, 1 First Canadian Place
100 King Street West
Toronto ON M5X 1G5
Tel: 416-862-5778
Fax: 416-862-7661
Email : jennifer.king@gowlingwlg.com

Counsel for the Intervenor, Canadian Taxpayers Federation

Bruce Hallsor, Kevin Bellis and
Dr. Charles Lugosi
Crease Harman LLP
Barristers and Solicitors
800 – 1070 Douglas Street
Victoria, BC V8W 2C4
Tel: 250-388-5421
Fax: 250-388-4294
Email : bhallsor@crease.com
kbellis@crease.com
dr.charles.lugosi@crease.com

Counsel for the Intervenor, Climate Justice, et al.

Jonathan Stockdale, Taylor-Anne Yee and
Larry Kowalchuk
Stockdale Law
Barristers & Solicitors
416 21 St. E, Suite 207
Saskatoon, SK S7K 0C2
Fax: 306-931-9889
Email: jonathan@stockdalelaw.ca
taylor@stockdalelaw.ca
larry@kowalchuklaw.ca

Counsel for the Intervenor, David Suzuki Foundation

Joshua Ginsberg
Ecojustice Environmental Law Clinic at
University of Ottawa
216 – 1 Stewart Street
Ottawa, ON K1N 6N5
Tel: 613-562-5800, ext 5225
Fax: 613-562-5319
Email: jginsberg@ecojustice.ca

Randy Christensen Ecojustice
390 - 425 Carrall Street
Vancouver, BC V6B 6E3
Tel: 604-685-5618, ext 234
Email : rchristensen@ecojustice.ca

Counsel for the Intervenor, International Emissions Trading Association	Lisa DeMarco and Jonathan McGillivray DeMarco Allan LLP Bay Adelaide Centre 333 Bay Street, Suite 625 Toronto, ON M5H 2R2 Tel: 647-991-1190 Fax: 888-734-9459 Email: lisa@demarcoallan.com jonathan@demarcoallan.com
Counsel for the Intervenor, Saskatchewan Power Corporation / SaskEnergy Incorporated	David M.A. Stack, Q.C. McKercher LLP Barristers & Solicitors 374 Third Avenue South Saskatoon, SK S7K 1M5 Tel: 306-664-1277 Fax: 306-653-2669 Email : d.stack@mckercher.ca

TABLE OF CONTENTS

PART I OVERVIEW AND STATEMENT OF FACTS

A. Overview

1. Global climate change is an urgent threat to humanity. Greenhouse gases (GHGs) in the atmosphere enable global warming, causing climate change and creating national and international risks to human health and well-being. GHG emissions cannot be contained within geographic boundaries. Their deep reduction requires an integrated pan-Canadian and international approach to avoid significantly worsening consequences of climate change.

2. The pith and substance of the *Greenhouse Gas Pollution Pricing Act* (*Act*) is establishing minimum national standards of stringency for GHG emissions pricing to reduce Canada's nationwide GHG emissions.

3. The *Act* falls within Parliament's jurisdiction to legislate for the peace, order, and good government of Canada on matters of national concern. "Establishing minimum national standards that are integral to reducing Canada's nationwide GHG emissions" is a matter of national concern that only Parliament can address. The *Act* in pith and substance relates to this subject matter. Carbon pricing is widely recognized as an essential measure to achieve the necessary global GHG emissions reductions. It is integral to meeting Canada's nationwide GHG emissions reduction target of 30% below 2005 levels by 2030.

4. To deny Parliament jurisdiction to establish minimum national standards that are integral to reducing Canada's nationwide GHG emissions would leave a gaping hole in the Constitution in terms of legislative powers to implement national GHG emissions mitigation measures to address the existential threat of climate change.

5. Establishing minimum national standards that are integral to reducing Canada's nationwide GHG emissions is a matter of national concern that is constitutionally distinct from matters within provincial jurisdiction and is not a "supervisory federal power". The provincial inability test confirms Parliament's jurisdiction and defines its limits. Provinces are constitutionally incapable of legislating to address this matter. To be valid, any federal legislation addressing this matter must be integral to an evidence-based plan for reducing Canada's nationwide GHG emissions and must implement a national measure for which the

failure to include one or more provinces or territories would jeopardize its successful operation in other parts of the country. The *Act* meets these criteria.

6. Parliament's ability to address this matter of national concern has a reconcilable scale of impact on the distribution of powers under the Constitution and respects the principles of federalism and subsidiarity. The modern approach to federalism recognizes that overlapping powers are unavoidable. Parliament's authority to enact minimum national standards that are integral to reducing Canada's nationwide GHG emissions does not impair provincial legislative powers, including provinces' jurisdiction over the development, conservation, and management of natural resources and electricity generation under s. 92A(1) of the *Constitution Act, 1867*. Precise definition of the matter of national concern and a careful pith and substance analysis precludes federal overreach into local provincial matters. The double aspect doctrine and the narrow interpretation of the paramountcy doctrine ensure ample room for robust provincial legislation.

7. The *Act* itself was designed to complement and respect provincial jurisdiction to enact carbon pricing systems. It provides provinces with flexibility to implement carbon pricing systems that suit their own circumstances, but fills in gaps where provincial pricing systems do not meet minimum national standards of stringency.

B. Facts

8. The Attorney General of Alberta's (Alberta) statement of facts is incomplete and, in some cases, inaccurate. The Attorney General of Canada (Canada) provides the following additional facts and clarifications that are relevant to the issues before this Court.

i. Climate change caused by GHG emissions is a global concern

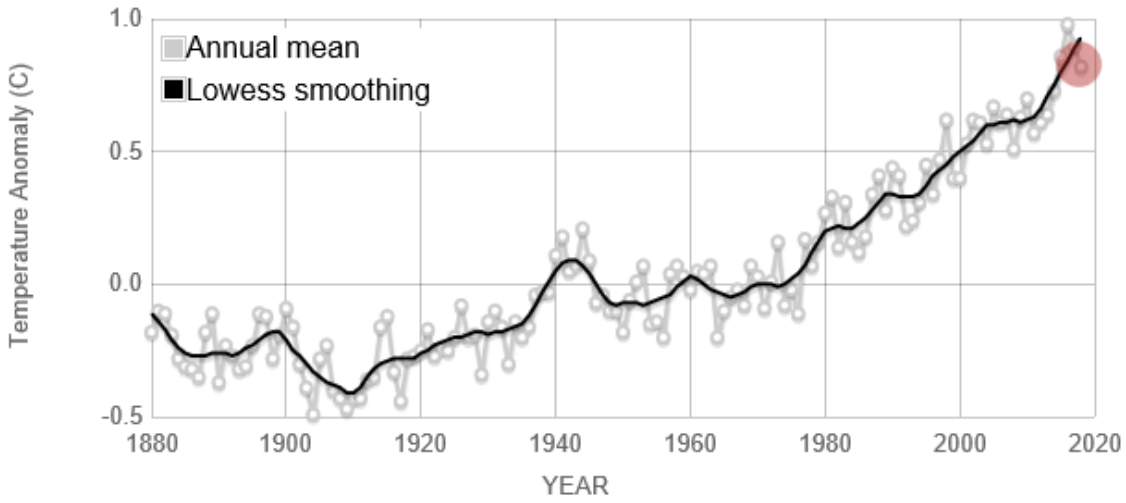
9. Global climate change is happening now and is having very real consequences on people's lives in Alberta, throughout Canada, and globally. The decisions we make today are critical to ensuring a safe and sustainable world for everyone, now and in the future.[1]

[1] Record of the Attorney General of Canada [**CR**] Vols 1-2, Tab 1, Affidavit of John Moffet, affirmed September 30, 2019, at para 6, 12-34, Exhibits [**Exs**] B-K [**Moffet**].

10. Burning fossil fuels releases GHGs into the atmosphere, which cause global climate change. The scientific properties of GHGs and their role in global climate change are not in dispute. GHGs trap solar energy in the earth's atmosphere. Higher levels of GHGs trap more solar energy, increasing air and water temperatures, which is significantly affecting our global climate. Carbon dioxide (CO_2) is the most abundant GHG emitted by human activity. Climate records show that atmospheric concentrations of CO_2 are higher today than at any time in the past million years and are still climbing.[2]

11. Increasing concentrations of GHGs in the atmosphere correlates with the rising global temperatures that cause climate change. Eighteen of the nineteen warmest years on record have occurred since 2001. The years 2014-18 are the hottest five years on record.[3]

Data source: NASA's Goddard Institute for Space Studies (GISS).
Credit: NASA/GISS



12. The Intergovernmental Panel on Climate Change reports that global net human-caused GHG emissions must fall rapidly by 2030 and reach "net zero" around 2050 to avoid

---

[2] Appeal Record and Evidence of the Attorney General of Alberta [**ABR**], Vol 1, Affidavit of Robert Savage, sworn August 1, 2019, at paras 12-13 [**Savage**]; CR, Vol 1, Tab 1, Moffet at paras 7-10, Exs A at R78.

[3] CR, Vol 1, Tab 1, Moffet at paras 8-12, 15, Exs A, B, D; *House of Commons Debates*, 42-1 [***Debates***], No 146, (23 February 2017) at 9294-95, Canada's Book of Authorities [**CBA]**, Vol 2, Tab 27.

significantly more deleterious impacts of climate change. Thus, GHG emissions create a risk of harm to human health and the environment upon which life depends.[4]

13. The climate change impacts in Canada are significant. While climate change encapsulates far more than warming temperatures, temperatures in Canada have increased at roughly double the average global rate. In the Arctic, average temperatures have increased at a rate of nearly three times the global average. Predictions are that Canada's temperature will continue to rise at a faster rate than the world as a whole.[5]

14. Some of the existing and anticipated impacts of climate change in Canada include: changes in extreme weather events such as droughts, floods, longer fire seasons, and increased frequency and severity of heat waves (causing illness and death); degradation of soil and water resources; and expansion of the ranges of life-threatening vector-borne diseases, such as Lyme disease and West Nile virus. Melting permafrost in the North will undermine infrastructure (foundations) and winter roads. The increasing frequency and severity of extreme wildfire and weather events has significant economic costs. In the past decade, insurance claims in Canada from extreme weather events have risen dramatically, now costing up to $1.2 billion a year.[6]

a. International agreements identify climate change as an "urgent" priority

15. The United Nations has identified climate change caused by GHG emissions as an urgent global threat. GHG emissions circulate in the atmosphere, so emissions anywhere raise concentrations everywhere. In 1992, emerging international concern about the risks associated with climate change caused by GHG emissions led to the adoption of the *United*

---

[4] CR, Vol 1, Tab 1, Moffet at paras 16-22, 30-31, 61, Exs E-G; House of Commons, *Journals*, 42-1, No 435 (17 June 2019) at 5660-64, CBA, Vol 2, Tab 34.

[5] CR, Vols 1-2, Tab 1, Moffet at paras 25-28, 30, 34, Exs I at R390-93, J, K at R431-32; *Debates*, No 289 (1 May 2018) at 18981, 18984 (Hon. Catherine McKenna, Minister of Environment and Climate Change [ECC Minister]), CBA, Vol 2, Tab 30, No 146 (23 February 2017) at 9295, CBA, Vol 2, Tab 27.

[6] CR, Vols 1-2, Tab 1, Moffet at paras 17, 24-26, 29, 31-34, Ex E at R262, para B3.3, Ex F at R296-97, Ex I at R395-401; *Debates*, No 289 (1 May 2018) at 18981 (ECC Minister), CBA, Vol 2, Tab 30, No 294 (8 May 2018) at 19235, CBA, Vol 2, Tab 31, No 146 (23 February 2017) at 9295, CBA, Vol 2, Tab 27.

Nations Framework Convention on Climate Change (*UNFCCC*). Subsequent international agreements and actions under the *UNFCCC* reflect the escalating crisis.[7]

16. The *UNFCCC*'s ultimate objective is the "stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system." Under the *UNFCCC*, Canada committed to taking GHG emissions mitigation measures. The *UNFCCC* created a framework for its implementation by establishing the "Conference of the Parties" (COP). All States Parties to the *UNFCCC* are represented at the COP, which reviews implementation of the *UNFCCC* and makes decisions necessary to achieve its objectives.[8]

17. The *UNFCCC* defines "greenhouse gases" as "those gaseous constituents of the atmosphere, both natural and anthropogenic, that absorb and re-emit infrared radiation." The concept of "global warming potential" allows comparison of each GHG's ability to trap solar energy relative to CO_2, which has a nominal global warming potential of 1.[9]

18. In December 2015, the COP adopted the *Paris Agreement* in which Canada and 194 other countries committed to strengthening the global response to the threat of climate change. These State Parties formally recognized "that climate change represents an urgent and potentially irreversible threat to human societies and the planet and thus requires the widest possible cooperation by all countries, and their participation in an effective and appropriate international response, with a view to accelerating the reduction of global emissions". They agreed to accelerate and intensify the actions and investments needed for a sustainable low-carbon future. The *Paris Agreement* aims to hold "the increase in the global average temperature to well below 2˚C above pre-industrial levels and pursu[e] efforts to limit the temperature increase to 1.5˚C above pre-industrial levels."[10]

---

[7] CR, Vols 1-2, Tab 1, Moffet at paras 7, 35-53, Exs L, M.
[8] CR, Vols 1-2, Tab 1, Moffet at paras 37, 40-53, and Ex L at R448-51, art 2, art 4, paras 2(a), 2(b) and at R454-56, art 7.
[9] CR, Vols 1-2, Tab 1, Moffet at paras 38-39, 69, Ex L at R447; CR, Vol 3, Tab 2, Expert Report of Dr. Dominique Blain, affirmed September 27, 2019, at paras 3, 6-11 [**Dr. Blain**].
[10] CR, Vols 1-2, Tab 1, Moffet at paras 43, 45-46, 48, Ex M at R471, 491-92, art 1, para 1(a), art 2, art 4.

19. Canada ratified the *Paris Agreement* on October 5, 2016. The *Paris Agreement* requires State Parties to report and account for their progress towards achieving its nationally determined contribution. Canada first communicated its intended nationally determined contribution prior to ratification, on May 15, 2015. When Canada became a Party to the *Paris Agreement*, it reconfirmed this target, which is to reduce Canada's GHG emissions by 30% below 2005 levels by 2030. Canada's calculated 2030 target is 511 Mt of CO_2 equivalent (CO_2e), which is 205 Mt CO_2e less than 2017 emissions. Canada (along with other State Parties) is required to communicate its next, more ambitious, target by 2025.[11]

b. International support for and trend towards widespread carbon pricing

20. Contrary to paragraph 55 of Alberta's Factum, there is international consensus that carbon pricing[12] is an essential, though not sufficient, measure to achieve the necessary global GHG emissions reductions. The International Monetary Fund describes carbon pricing as the most effective emissions mitigation instrument because it establishes the price signals needed to redirect technological changes towards low-emission investments. Recently, the High-Level Commission on Carbon Prices, comprised of economists, and climate change and energy specialists, reported that "a well-designed carbon price is an indispensable part of a strategy for reducing emissions in an efficient way."[13]

ii. Establishing minimum national standards that are integral to reducing Canada's nationwide GHG emissions is a matter of national concern

a. Canada's GHG emissions

21. Canada prepares GHG inventory reports in accordance with the *UNFCCC* Reporting Guidelines. Canada's most recent National Inventory Report reported emissions estimates

---

[11] CR, Vol 3, Tab 2, Dr. Blain at para 21; CR, Vol 1, Tab 1, Moffet at paras 50-53, 72.
[12] Pricing for GHG emissions is typically referred to as "carbon pricing" even though pricing applies to a range of GHG emissions. This nomenclature reflects the dominant role of CO_2 in total GHG effects and the practice of equating GHGs emissions on a CO_2 equivalent basis: CR, Vols 1-2, Tab 1, Moffet at paras 1 (footnote 1), 69; ABR, Vol 7, Savage, Ex CCCC at A2619.
[13] CR, Vols 1-2, Tab 1, Moffet at paras 54-58, Ex O at R520, 524-26, 532, Ex R at R601.

between 1990 and 2017. These estimates show that Canada's 2017 GHG emissions (716 Mt CO_2e) decreased by 2% from Canada's 2005 GHG emissions (730 Mt CO_2e).[14]

22. GHG emissions and emissions trends vary by province. Since 2005, GHG emissions have increased in Alberta, Saskatchewan, Manitoba, Newfoundland and Labrador, and Nunavut, while emissions have decreased in British Columbia, Ontario, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Northwest Territories, and Yukon. Since 2005, Alberta's annual GHG emissions have increased by 42 Mt CO_2e (18%), from 231 Mt to 273 Mt CO_2e. In British Columbia, 5-15% of the emissions reductions have been attributed to carbon pricing.[15]

b. The Vancouver Declaration on Clean Growth and Climate Change and the Working Group on Carbon Pricing Mechanisms

23. The Government of Canada is working cooperatively with the provinces and territories to reduce GHG emissions. Before Canada signed the *Paris Agreement*, the Prime Minister met with all provincial and territorial Premiers in Vancouver to discuss actions to address climate change. At that meeting, the First Ministers committed to implement GHG mitigation policies in support of meeting or exceeding Canada's *Paris Agreement* target and agreed to work together to develop an integrated pan-Canadian framework on clean growth and climate change.[16]

24. The *Vancouver Declaration* led to four joint Federal-Provincial-Territorial working groups including a Working Group on Carbon Pricing Mechanisms. The Carbon Pricing Working Group's mandate was to "provide a report with options on the role of carbon pricing mechanisms in meeting Canada's emission reduction targets, including different design options taking into consideration existing and planned provincial and territorial systems." The *Final Report* was prepared on a Federal-Provincial-Territorial consensus basis.[17]

---

[14] CR, Vol 3, Tab 2, Dr. Blain at paras 10-19; CR, Vol 1, Tab 1, Moffet at para 72.
[15] CR, Vol 3, Tab 2, Dr. Blain at para 22, Ex B at R1044-45; CR, Vol 3, Moffet, Ex AA at R798; CR, Vol 4, Tab 5, Expert Report of Dr. Nicholas Rivers, affirmed September 27, 2019, Ex B at R1167-72 [**Dr. Rivers**].
[16] CR, Vol 1, Tab 1, Moffet at paras 61-63; ABR, Vol 7, Savage, Ex BBBB at A2598.
[17] CR, Vol 1, Tab 1, Moffet at paras 64-65; ABR, Vol 7, Savage, Ex CCCC.

25. The Carbon Pricing Working Group's *Final Report* outlined that many experts regard carbon pricing as a necessary tool for reducing GHG emissions. It is considered one of the most efficient policy approaches for reducing GHG emissions because it provides flexibility to industry and consumers to identify how they will reduce their own emissions, and spurs innovation to find new ways to do so. Extensive modelling supported the Carbon Price Working Group's examination of the economic and GHG emissions reduction impacts carbon pricing could have in Canada. Each carbon pricing scenario modelled resulted in significant GHG emissions reductions at the national level.[18]

c. The Pan-Canadian Approach to Pricing Carbon Pollution

26. Based on the Working Group's *Final Report*, the Prime Minister announced in Parliament the pan-Canadian approach to pricing carbon pollution to "help Canada reach its targets" for reduced GHG emissions. The Government of Canada concurrently published the *Pan-Canadian Approach to Pricing Carbon Pollution* document. Both presented the pan-Canadian Benchmark for carbon pricing (Benchmark) and its underlying principles.[19]

27. The Benchmark emphasizes carbon pricing as a foundational element of Canada's overall approach to fighting climate change. It expresses the objective of ensuring "that carbon pricing applies to a broad set of emission sources throughout Canada with increasing stringency over time to reduce GHG emissions".[20]

28. Rather than imposing a single carbon pricing system throughout Canada, including in the four provinces with then-existing systems (British Columbia, Alberta, Ontario, and Quebec), the federal government articulated a commitment to ensure a consistent approach to carbon pricing across Canada that both respected existing provincial systems and gave other provinces and territories flexibility in developing their own carbon pricing systems. The Benchmark provides guidance on a core set of stringency criteria. It sets out the scope

---

[18] CR, Vol 1, Tab 1, Moffet at paras 66-79; ABR, Vol 7, Savage, Ex CCCC at A2617, 2632-37; CR, Vol 4, Tab 3, Affidavit of Warren Goodlet, affirmed September 27, 2019, at paras 8-20 [**Goodlet**].

[19] *Debates*, No 86 (3 October 2016) at 5359-61 (Rt Hon. Justin Trudeau, Prime Minister of Canada) , CBA, Vol 2, Tab 26; CR, Vols 1, 3, Tab 1, Moffet at paras 80-81, Ex U.

[20] CR, Vols 1, 3, Tab 1, Moffet at para 82, Ex U.

of GHG emissions to be covered by carbon pricing, provides criteria for each type of system, and includes minimum escalating stringency requirements. Finally, it provides that the Government of Canada will implement an explicit price-based carbon pricing system that would apply in jurisdictions that do not develop a system that aligns with the Benchmark.[21]

29. At paragraphs 89 and 265 of its Factum, Alberta notes that the Benchmark does not require that cap-and-trade systems achieve the same price on emissions. Explicit price-based systems and cap-and-trade systems do not require equivalent prices to be equivalently stringent. To meet the Benchmark stringency criteria, cap-and-trade systems require a provincial emissions target equal to or greater than Canada's 30% reduction target from 2005 emissions, and increasingly stringent annual caps that at least correspond to the projected emissions reductions from price-based systems. While Alberta's previous explicit price-based system met the Benchmark stringency criteria for this type of system, it would be almost impossible for Alberta to meet the Benchmark stringency criteria for a cap-and-trade system. A 30% cut by 2030 far exceeds Alberta's level of ambition under any of its climate plans and projections show Alberta has no realistic prospect of achieving this target.[22] Indeed, Alberta does "not have a target for absolute emissions reductions."[23]

d. The Pan-Canadian Framework on Clean Growth and Climate Change

30. The *Vancouver Declaration* and the four working group reports[24] led to the adoption of the *Pan-Canadian Framework on Clean Growth and Climate Change* (*Pan-Canadian Framework*) on December 9, 2016. The *Pan-Canadian Framework* is an agreement among First Ministers that includes commitments by federal, provincial, and territorial governments. It is the nation's overarching framework to reduce GHG emissions. It aims to achieve the behavioural and structural changes needed to transition to a low-carbon economy, stimulate clean economic growth, and build resilience to the impacts of climate change. Alberta

---

[21] CR, Vols 1, 3, Tab 1, Moffet at paras 83-89, Exs U, X, and Y.
[22] CR, Vols 1, 3, Tab 1, Moffet at paras 85-89, Ex X at R780; CR, Vol 3, Tab 2, Dr. Blain at paras 25-26, Exs C, D; Cross-Examination on Affidavit of Robert Savage, October 21, 2019 [**Savage Cross-Examination**] at p 68, ln 22 to p 71, ln 22.
[23] Savage Cross-Examination at p 27, ln 24 to p 29, ln 4.
[24] These working group reports include the *Specific Mitigation Opportunities Working Group Final Report* referred to at para 44 of Alberta's factum.

"participate[d] in the drafting"[25] of the *Pan-Canadian Framework*. Eight provinces, including Alberta, and all three territories joined the *Pan-Canadian Framework* on December 9, 2016. Manitoba joined in February 2018. Saskatchewan has not joined.[26]

31. Pricing carbon pollution is one of the four main pillars of the *Pan-Canadian Framework*. It noted the "growing consensus among both governments and businesses on the fundamental role of carbon pricing in the transition to a decarbonized economy." The *Pan-Canadian Framework* rearticulated the pan-Canadian approach to carbon pricing and annexed the Benchmark and provincial statements, including Alberta's statement on carbon pricing. Because carbon pricing on its own is not sufficient for Canada to reach its *Paris Agreement* emissions reduction target, the *Pan-Canadian Framework* also outlines extensive complementary measures, both federal and provincial.[27]

32. Despite government changes in Ontario and Alberta, both provinces continue to participate actively in the *Pan-Canadian Framework*. Alberta is receiving Low Carbon Economy Fund funding as part of its ongoing participation.[28]

iii. The Greenhouse Gas Pollution Pricing Act

a. Additional pre-enactment consultation and policy development

33. Following up on its undertaking to introduce a federal carbon pricing system as a "backstop", the Government of Canada released a *Technical Paper* that outlined the elements and operation of the proposed system in May 2017 and invited feedback. It explained the

---

[25] Savage Cross-Examination at p 37, ln 2 to p 43, ln 23, quote at p 43, ln 15-16. Contra Alberta's Factum at para 46.

[26] CR, Vols 1-3, Tab 1, Moffet at paras 54, 56-58, 90-102, 137-39, Ex O at R526, 569-72, Ex R at R601-02, Ex FF; ABR, Vol 8, Savage, Ex JJJJ at A2913-14, 2917-21; Savage Cross-Examination at p 32, ln 15 to p 33, ln 8.

[27] ABR, Vols 1, 8, Savage at para 261, Ex JJJJ at A2923, ch 2, 3, 5, 6, and Annex I at A2972-73; CR, Vol 1, Tab 1, Moffet at paras 54, 56, 92-102, 174; House of Commons, Standing Committee on Finance, *Evidence*, 42-1, No 148 (1 May 2018) at 5, 8 (Moffet) [**FINA**], CBA, Vol 2, Tab 36; Senate, Standing Senate Committee on Energy, the Environment and Natural Resources, *Evidence*, 42-1, No 44 (1 May 2018) at 44:9-11 (Moffet) [**ENEV**], CBA, Vol 2, Tab 45.

[28] CR, Vol 1, 3, Tab 1, Moffet at paras 98-100, 172, Ex UU at R996-98; CR, Vol 4, Tab 3, Goodlet at paras 29-32.

two complementary components of the federal system: a fuel charge and an Output-Based Pricing System (OBPS).[29]

34. During 2017, the Government of Canada also published *Guidance on the Pan-Canadian Carbon Pollution Pricing Benchmark* and *Supplemental Benchmark Guidance*. These documents provided further guidance on the scope of GHG emissions to which carbon pricing should apply, on the minimum legislated increases in stringency for both explicit price-based systems and cap-and-trade systems, and on the approach to further review. For jurisdictions with a hybrid system, like Alberta's, the further guidance provided provinces with the flexibility to tailor the output-based system to the particular circumstances of their industrial sectors, as follows:

> Jurisdictions may tailor the emission intensity standards in the output-based pricing component of their hybrid system to the circumstances of their sectors. These standards should be at levels that drive improved performance in carbon intensity over the 2018 to 2022 period, and should account for best-in-class performance. The reviews of carbon pricing committed to in the *Pan-Canadian Framework* will consider the adequacy of these emission intensity standards, accounting for their impacts on emissions, innovation, competitiveness and carbon leakage.[30]

35. In late 2017, the Ministers of Environment and Climate Change (ECC) and Finance wrote to their provincial counterparts. The letter outlined the process the federal government would follow with provinces and territories to confirm whether their carbon pricing system meets the federal Benchmark stringency criteria.[31]

36. In January 2018, the Ministers of ECC and Finance released a draft legislative proposal of the *Act* and the Government of Canada published a document called *Carbon Pricing: Regulatory Framework for the Output-based Pricing System*. It explained that the aim of the OBPS is to minimize competitiveness impacts and carbon leakage for emissions-intensive, trade-exposed industrial facilities, while retaining the carbon price signal and incentive to reduce GHG emissions. This document provided additional design information,

---

[29] CR, Vols 1, 3, Tab 1, Moffet at paras 103, Ex W.
[30] CR, Vols 1, 3, Tab 1, Moffet at paras 81-89, 104-106, Exs U, X at R780, and Y.
[31] CR, Vol 1, Tab 1, Moffet at para 107.

explained how output-based standards for industrial sectors would be established, and indicated that Environment and Climate Change Canada (ECCC) would undertake structured engagement (i.e. consultations) on the development of the OBPS.[32]

b. Parliament's objective: ensuring that GHG emissions pricing applies broadly throughout Canada, with increasing stringency over time, to reduce Canada's nationwide GHG emissions

37. The *Act* received Royal Assent on June 21, 2018. As reflected in the preamble, the key purpose of the *Act* is to create incentives for the behavioural changes and innovation necessary to reduce GHG emissions by ensuring that GHG emissions pricing applies broadly throughout Canada, with increasing stringency over time.[33]

38. Parliament's objective of reducing Canada's nationwide GHG emissions by encouraging behavioural change is reflected throughout debate on Bill C-74 and before the Parliamentary Committees considering it. In her testimony before the Standing Senate Committee on Energy, the Environment and Natural Resources, the Minister of ECC explained that "[a] price on carbon creates a powerful incentive to cut pollution" and that pricing carbon "makes pollution more expensive and clean innovation cheaper, so it spurs innovation". During second reading she explained that "pricing pollution is making a major contribution to helping Canada meet its climate targets under the *Paris Agreement*".[34]

---

[32] CR, Vols 1, 3, Tab 1, Moffet at paras 108-10, and Ex Z at R788-89, 793-94.

[33] *An Act to mitigate climate change through the pan-Canadian application of pricing mechanisms to a broad set of greenhouse gas emission sources and to make consequential amendments to other Acts*, short title *Greenhouse Gas Pollution Pricing Act*, being Part 5 of the *Budget Implementation Act, 2018, No 1*, SC 2018, c 12, s 186 [***Act***], Preamble, Alberta's Book of Legislation [**ABBL**], Vol 1, Tab 1. See also CR, Vol 1, Tab 1, Moffet at para 116.

[34] ENEV, No 46 (22 May 2018) at 46:7-8, CBA, Vol 2, Tab 46; *Debates*, No 289 (1 May 2018) at 18982 (ECC Minister), CBA, Vol 2, Tab 30. See also *Debates*, No 283 (23 April 2018) at 18612 (Minister of Finance) and 18629, CBA, Vol 2, Tab 29, No 305 (31 May 2018) at 19985 (ECC Minister), CBA, Vol 2, Tab 33, No 279 (16 April 2018) at 18315, CBA, Vol 2, Tab 28, No 294 (8 May 2018) at 19238, CBA, Vol 2, Tab 31; FINA, No 146 (25 April 2018) at 5-6 (Judy Meltzer, Director General, Carbon Pricing Bureau, ECCC), CBA, Vol 2, Tab 35; Senate, Standing Senate Committee on Agriculture and Forestry, 42-1, No 50 (1 May 2018) at 50:9-10 (Moffet) [**AGFO**], CBA, Vol 2, Tab 42; ENEV, No 44 (1 May 2018) at 44:9-10 (Moffet), CBA, Vol 2, Tab 45.

39. Industry has shown increasing support for carbon pricing,[35] including a number of oil and gas companies, such as Suncor and Shell, whose executives testified in favour of a national price on carbon prior to the passage of the *Act*.[36]

c. Architecture and operation of the *Act*

40. The *Act* provides the legal framework for the federal carbon pricing system and the enabling authorities to ensure that carbon pricing consistent with the Benchmark stringency criteria applies broadly throughout Canada. The Preamble sets out the *Act*'s purpose. Part 1 of the *Act* implements the fuel charge. Part 2 provides the framework for the OBPS and implements the excess emissions charge for large industrial emitters. Together, Parts 1 and 2 of the *Act* provide a complete and complementary federal system for pricing GHG emissions as a backstop to ensure that carbon pricing applies throughout Canada, with increasing stringency over time.[37]

41. Parts 1 and 2 of the *Act* operate in provinces or areas that are listed by the Governor in Council in Parts 1 and 2 of Schedule 1, respectively. The *Act* links the Governor in Council's listing decision to "the purpose of ensuring that the pricing of greenhouse gas emissions is applied broadly in Canada at levels that the Governor in Council considers appropriate" and requires the Governor in Council to "take into account, as the primary factor, the stringency of provincial pricing mechanisms for greenhouse gas emissions".[38]

---

[35] *Debates*, No 86 (3 October 2016) at 5360 (Rt Hon. Justin Trudeau, Prime Minister of Canada), CBA, Vol 2, Tab 26; *Debates*, No 289 (1 May 2018) at 18982 (ECC Minister), CBA, Vol 2, Tab 30; CR, Vols 1, 3, Tab 1, Moffet at para 94, Ex V.

[36] Standing Committee on Natural Resources, *Evidence*, 42-1, No 12 (16 May 2016) at 7 (Steve Reynish, Executive Vice-President, Strategy and Corporate Development, Suncor Energy Inc.), CBA, Vol 2, Tab 41, No 9 (2 May 2016) at 5 (Katrina Marsh, Director, Natural Resource and Environmental Policy, Canadian Chamber of Commerce), CBA, Vol 2, Tab 40; ENEV, No 25 (11 April 2017) at 25:20-21 (Tim Wiwchar, Portfolio Business Opportunity Manager, Shell Canada), CBA, Vol 2, Tab 44.

[37] *Act*, Preamble, Part 1, ss. 3-168, and Part 2, ss. 169-261, ABBL, Vol 1, Tab 1; CR, Vol 1, Tab 1, Moffet at paras 116-17.

[38] *Act*, ss 166(2), 166(3), 189(1) and 189(2), ABBL, Vol 1, Tab 1; FINA, No 157 (23 May 2018) at 12-14, CBA, Vol 2, Tab 39; CR, Vol 1, Tab 1, Moffet at para 117.

42. The fuel charge under Part 1 applies to GHG emitting fuels that are produced, delivered, or used in a listed province, brought to a listed province from another place in Canada, or imported into Canada at a place in a listed province. The fuels and their charge rates are set out in Schedule 2 of the *Act*. The charge rate for each fuel represents $20 per tonne of CO_2e emitted from each fuel in 2019, rising to $50 per tonne in 2022, consistent with the Benchmark price trajectory for explicit price-based systems. Most commonly, registered distributors are fuel producers or wholesale level fuel distributors. Generally, they pay the fuel charge for fuel they deliver to others. It is anticipated that they will accordingly adjust the price at which they sell the fuel to their customers, but the *Act* does not require them to do so.[39]

43. Part 1 provides for specific circumstances in which no charge is applicable on fuels delivered to individuals or industries with an exemption certificate. Most significantly, an industrial facility subject to the OBPS under Part 2 of the *Act* is exempted from the fuel charge because its excess GHG emissions are priced under Part 2 of the *Act*. Similarly, the *Act* includes the flexibility to enable the coordination of the federal fuel charge in Part 1 of the *Act* with provincial industrial emissions pricing systems, such as Alberta's existing *Carbon Competitiveness Incentive Regulations* (*CCIR*).[40]

44. Part 2 of the *Act* sets out the main powers and authorities for the OBPS for GHG emissions by large industrial facilities. Part 2 of the *Act* has the additional objective of creating a pricing incentive in a way that reduces competitiveness impacts and the risk of carbon leakage for industries that engage in cross-border trade – emissions-intensive and trade-exposed (EITE) industries. Part 2 applies to "covered facilities" and sets out registration and GHG emissions reporting requirements. Covered facilities are required to determine the quantity of GHG they emit and compare this quantity against the prescribed

---

[39] *Act*, s 55, Schedule 2, Table 2, Item 6, ABBL, Vol 1, Tab 1; CR, Vols 1, 3, Tab 1, Moffet at paras 119-20, Ex U; CR, Vol 4, Tab 5, Dr. Rivers at para 6, Ex B at R1146, 1148-51.
[40] *Act*, ss 28-36, esp ss 36(1)(b)(i), (v), (vii), ABBL, Vol 1, Tab 1; CR, Vol 1, Tab 1, Moffet at paras 121-23.

GHG emissions limit. Schedule 3 lists the GHGs to which Part 2 of the *Act* applies, being the *UNFCCC* defined GHGs.[41]

45. The OBPS and the excess emissions charge complement the fuel charge system. Rather than paying the fuel charge, covered facilities provide compensation for the portion of their GHG emissions that exceed their applicable emissions limit, based on an activity-specific output-based standard. The output-based standards are set as a percentage of the quantity of GHGs emitted on average by facilities conducting the particular activity (i.e. production of a product) in the *Output-Based Pricing System Regulations* (*OBPS Regulations*). In developing the output-based standards, ECCC used a three-phased approach to assess potential competitiveness risks from the OBPS.[42]

46. If a covered facility has excess emissions in a year, it may compensate for them in three ways. It may: (1) submit surplus credits it earned in the past, or that it has acquired from other facilities; (2) submit other prescribed credits that it acquired; or (3) pay an excess emissions charge. The excess emissions charge rates are set out in Schedule 4 of the *Act* and are equivalent to the escalating fuel charge rates. Conversely, a facility that emits less than its annual limit will receive surplus credits, which it may use for future compliance obligations or sell to other regulated facilities. In this way the system creates an incentive for continuous emissions reductions. The more a covered facility emits GHGs above its applicable emissions limit, the more it will have to pay. The more a covered facility reduces its GHG emissions below its limit, the more it will be able to earn by selling its credits.[43]

47. In October 2018, the Government of Canada announced the outcome of its initial stringency assessments. The Benchmark and the two supplemental Benchmark guidance documents set out the criteria used for this assessment. Pursuant to the Governor in Council's

---

[41] *Act*, s 169, Schedule 3, ABBL, Vol 1, Tab 1; ENEV, No 44 (1 May 2018) at 44:14, 44:20-21, CBA, Vol 2, Tab 45; CR, Vol 1, Tab 1, Moffet at paras 39, 125-27; CR, Vol 3, Tab 2, Dr. Blain at para 8.
[42] *Act*, s 174, ABBL, Vol 1, Tab 1; CR, Vol 1, Tab 1, Moffet at paras 121-22, 126-28, 133-34, 145-50.
[43] *Act*, ss 174, 175, 185, Schedule 4, ABBL, Vol 1, Tab 1; CR, Vols 1, 3, Tab 1, Moffet at paras 129-30, Ex T at R734.

decisions, the OBPS under Part 2 started applying in Ontario, New Brunswick, Manitoba, Prince Edward Island, and partially in Saskatchewan on January 1, 2019 and the fuel charge under Part 1 started applying in Ontario, New Brunswick, Manitoba, and Saskatchewan on April 1, 2019. For the territories, Parts 1 and 2 of the *Act* started applying in Yukon and Nunavut on July 1, 2019. As discussed below, a further stringency assessment was conducted in relation to legislative changes effected in Alberta in June 2019.[44]

48. Where the federal carbon pricing system applies, all direct proceeds from the charges must be returned to the jurisdiction or area of origin. In provinces where the fuel charge applies, the federal government returns the bulk (about 90%) of the proceeds from the fuel charge directly to residents in the province of origin in the form of Climate Action Incentive payments. The direct proceeds from the fuel charge not returned through Climate Action Incentive payments are returned through support to schools, hospitals, small and medium-sized businesses, colleges and universities, municipalities, not-for-profit organizations, and Indigenous communities in the province of origin.[45]

d. Parliament understood that carbon pricing throughout Canada that meets minimum national standards of stringency is integral to reducing Canada's nationwide GHG emissions

49. Parliament understood the efficacy of carbon pricing as a means to encourage behavioural changes to reduce GHG emissions. Parliament was informed that "[e]xperts around the world, including the vast majority of Canadian economists, agree that carbon

---

[44] *Order Amending Part 2 of Schedule 1 to the Greenhouse Gas Pollution Pricing Act*, SOR/2018-212, CBA, Vol 1, Tab 22; *Regulations Amending Part 1 of Schedule 1 and Schedule 2 to the Greenhouse Gas Pollution Pricing Act*, SOR/2019-79, CBA, Vol 1, Tab 23. The OBPS only applies partially in Saskatchewan, because Saskatchewan implemented its own industrial pricing system on January 1, 2019. The federal backstop applies to the emission sources not covered by Saskatchewan's system (electricity generation and natural gas transmission pipelines). New Brunswick and Prince Edward Island asked to have Part 2 apply. The Yukon and Nunavut asked to have both Part 1 and Part 2 apply. CR, Vols 1, 3, Tab 1, Moffet at paras 136-38, 141-45, 152, Exs EE-LL, UU.

[45] *Act*, ss 165(2) and 188(1), ABBL, Vol 1, Tab 1; *Budget Implementation Act, 2018, No 2*, SC 2018, c 27, s 13, CBA, Vol 1, Tab 21, CR, Vols 1, 3, Tabs 1, 3, Moffet at paras 141-42, Exs CC-II, NN-QQ; CR, Vol 4, Tab 4, Affidavit of Jean-François Ruel, affirmed September 30, 2019, at paras 2, 6, 8.

pricing is one of the most cost-effective ways to reduce emissions."[46] Throughout the legislative process, the Minister of ECC, and others, repeated the evidence on the 5-15% emissions reduction impact of British Columbia's carbon pricing scheme. The testimony of non-governmental witnesses appearing before the Parliamentary Committees confirmed that carbon pricing is effective for reducing GHG emissions. Simply put, "[c]arbon pricing works. Study after study shows that in jurisdictions with a carbon price, emissions are lower than they would otherwise be."[47]

50. Additionally, on April 30, 2018, the Government of Canada published *Estimated Results of the Federal Carbon Pollution Pricing System*, which was provided to the committees considering the Bill. These estimates were based on a scenario in which the federal carbon pricing system was applied in the jurisdictions that did not have a pricing system in place and on the existing systems remaining in place in British Columbia, Alberta, Ontario, and Quebec. That analysis estimated that, collectively, carbon pricing throughout Canada meeting the federal Benchmark would achieve an 80 to 90 Mt CO_2e reduction in Canada's nationwide annual GHG emissions by 2022 – contributing significantly towards meeting Canada's *Paris Agreement* targets, with minimal impact on estimated GDP growth.[48] The estimated GHG emissions reduction impact of carbon pricing throughout

---

[46] *Debates*, No 294 (8 May 2018) at 19236 (Jonathan Wilkinson, Parliamentary Secretary to the Minister of Environment and Climate Change), CBA, Vol 2, Tab 31.

[47] Quote from ENEV, No 45 (10 May 2018) at 45:47 (Martha Hall Finlay, Canada West Foundation), CBA, Vol 2, Tab 46; *Act*, Preamble, ABBL, Vol 1, Tab 1; *Debates*, No 289 (1 May 2018) at 18982 (ECC Minister), CBA, Vol 2, Tab 30, No 294 (8 May 2018) at 19238, CBA, Vol 2, Tab 31, No 304 (30 May 2018) at 19972-73, CBA, Vol 2, Tab 32; FINA, No 146 (April 25, 2018) at 5 (Meltzer), CBA, Vol 2, Tab 35, No 151 (7 May 2018) at 1 (Andrew Leach, University of Alberta), and 3 (Dale Beugin, Canada's Ecofiscal Commission), CBA, Vol 2, Tab 37; ENEV, No 46 (22 May 2018) at 46:8 (ECC Minister), CBA, Vol 2, Tab 47, and No 45 (10 May 2018) at 45:62 (Beugin) , CBA, Vol 2, Tab 46; AGFO, No 52 (22 May 2018) at 52:34-35 (Beugin), CBA, Vol 2, Tab 43; CR, Vol 4, Tab 5, Dr. Rivers at paras 5, 6, Ex B.

[48] CR, Vols 1, 3, Tab 1, Moffet at paras 112-14 and Ex AA at R798-800; CR, Vol 4, Tab 3, Goodlet at paras 25-26; ENEV, No 44 (1 May 2018) at 44:9-10 (Moffet), CBA, Vol 2, Tab 45; FINA, No 148 (1 May 2018) at 5-6 (Moffet), CBA, Vol 2, Tab 36, No 152 (8 May 2018) at 7-8 (Moffet), CBA, Vol 2, Tab 38.

Canada has since been updated to a 50-60 Mt annual reduction by 2022 due to Ontario's cancellation of its cap and trade system.[49]

iv. Complementary federal measures to reduce Canada's GHG emissions

51. Ensuring that carbon pricing applies throughout Canada is integral to addressing Canada's nationwide GHG emissions. At the same time, there is no dispute that additional measures are needed to meet Canada's GHG emissions reduction target. Complementary federal GHG emissions reduction measures are in place or planned under the *Canadian Environmental Protection Act, 1999* (*CEPA*). The *Estimated Results* document referenced above included the estimated emissions reductions contribution of three of these federal policy measures. The federal government is also investing in clean technology research, innovation, and other GHG emissions reduction programs.[50]

v. Alberta's circumstances

a. Legislative changes in Alberta change the stringency assessment outcome

52. On May 30, 2019, Alberta repealed the carbon levy it imposed in 2017 under its *Climate Leadership Act*. As a result, Alberta now only partially meets federal Benchmark stringency requirements. Consequently, on June 13, 2019, the federal government announced its intent to implement the fuel charge under Part 1 of the *Act* in Alberta, as of January 1, 2020, to ensure that carbon pricing meeting the minimum national standards of stringency set out in the Benchmark continues to apply in Alberta. Fuel charge proceeds collected in Alberta will be returned to individuals through Climate Action Incentive payments and through investments to support particularly affected sectors.[51]

53. Alberta has also announced that it will replace its *CCIR* with Technology Innovation and Emissions Reduction (TIER), a new carbon pricing scheme for large industrial emitters.

---

[49] CR, Vols 1, 3, Tab 1, Moffet at para 142, Ex DD; CR, Vol 4, Tab 3, Goodlet at para 28.
[50] CR, Vols 1-3, Tab 1, Moffet at paras 92, 97, 142, 165-87, Exs N at R508-10, AA at R799, EE-LL, VV; ABR, Vol 8, Savage, Ex JJJ at A2917-21, 2925-42, 2953-61.
[51] CR, Vols 1, 3, Moffet at paras 151-52, Ex UU; *Part 1 of the Greenhouse Gas Pollution Pricing Act Regulations (Alberta)*, SOR/2019-294, CBA, Vol 1, Tab 24.

ECCC officials will undertake another Benchmark stringency assessment once sufficient details about the new system for large emitters are available.[52]

b. Additional clarifications regarding Alberta's statement of facts

54. Canada accepts Alberta's evidence, at paragraphs 16-28 of its Factum, which describe the linkage between Alberta's oil and gas sector, its prosperity, and the corresponding economic contributions Alberta makes to the benefit of Canadians. However, there is no admissible evidence before this Court showing that carbon pricing will have a significant negative economic impact in Alberta. The modeling done by ECCC in 2018 projected that carbon pricing under the *Act* would impact average annual GDP growth rates for Canada by less than one tenth of one percentage point. This modeling did not capture some of the benefits from carbon pricing, such as improved innovation.[53]

55. At paragraphs 29-38 of its Factum, Alberta describes itself as a leader in dealing with GHG emissions. Aspects of Alberta's evidence regarding its historic emissions reductions and the emissions reduction it forecasts from its forthcoming TIER program are incomplete or inaccurate.[54]

56. At paragraphs 71-77 of its factum, Alberta describes its emissions profile and states that its "demand-side" emissions are proportionally smaller than in other provinces. Additional facts and clarifications are relevant to put these paragraphs in context. With respect to its emissions profile, Alberta's annual GHG emissions are by far the highest in Canada (273 Mt CO_2e), constituting more than 1/3 of Canada's total emissions in 2017. Alberta's 18% increase in annual GHG emissions since 2005 is primarily driven by a 45 Mt increase in emissions from oil sands extraction during that period, 30 Mt of which are attributable to emissions from *in situ* extraction. Globally, Alberta's fast growing emissions are an outlier relative to most other developed regions. Alberta's per capita GHG emissions are higher than any other country and they are the second highest in Canada at 64.3 kt CO_2e

---

[52] CR, Vol 1, Tab 1, Moffet at paras 151-56.
[53] CR, Vol 4, Tab 3, Goodlet at para 25; CR, Vol 3, Moffet, Ex AA at R800-01.
[54] CR, Vol 4, Tab 3, Dr. Rivers, Ex D at R1210-20; CR, Vol 4, Tab 3, Goodlet at paras 29-35; CR, Vol 3, Tab 2, Dr. Blain at para 31.

per capita, second only to Saskatchewan at 67.7 kt CO_2e per capita. Per capita GHG emissions in Canada are on average 19.6 kt CO_2e. Alberta's emissions intensity relative to its gross domestic product (GDP) increased by 4% between 2005 and 2017. By contrast, the emissions intensity of Canada's economy decreased by 20% between 2005 and 2017.[55]

57. With respect to "demand-side" emissions, in absolute values Alberta's demand-side emissions were 52.5 Mt CO_2e in 2017, the second highest amongst provinces and territories, after Ontario. On a per capita basis they are third highest after Saskatchewan and the Northwest Territories. Demand-side emissions are a smaller share of Alberta's total emissions because emissions from other sectors are extremely high in Alberta, not because its demand-side emissions are low.[56]

58. At paragraphs 60-64 of its Factum, Alberta suggests that the effectiveness of "demand side" carbon pricing is limited. However, the admissible evidence before this Court refutes this assertion. Dr. Rivers' expert evidence makes clear that carbon pricing is effective in reducing GHG emissions in the demand side sectors of the economy.[57]

59. At paragraphs 66-69 and 78-84 of its Factum, Alberta discusses the vulnerability of EITE industries to competitiveness impacts and carbon leakage that could result from carbon pricing. Currently, Alberta's EITE industries are subject to carbon pricing under Alberta's *CCIR* system, which meets the Benchmark stringency standards. If Alberta's new TIER program is enacted and is also found to meet the Benchmark stringency standards, then Alberta's EITE industries will continue to be subject to carbon pricing under Alberta's own system. In any event, like Alberta's *CCIR*, the federal OBPS was designed to mitigate competitiveness and carbon leakage risks for EITE industries. Finally, according to Dr. Rivers, the evidence Alberta relies on, especially in paragraphs 66 and 67 of its Factum, "overstates the likelihood of emission leakage that may result from a carbon price in Alberta."[58]

---

[55] CR, Vol 3, Tab 2, Dr. Blain at paras 22, 25-26; CR, Vol 4, Dr. Rivers, Ex D at R1211-14.
[56] CR, Vol 3, Tab 2, Dr. Blain, at paras 27-30; CR, Vol 4, Dr. Rivers, Ex D at R1221-22.
[57] CR, Vol 4, Dr. Rivers, Ex B at R1146-77, Ex D at R1221-22.
[58] CR, Vol 4, Tab 5, Dr. Rivers at subpara 11(c), Ex D at R1209, 1223-24; Savage Cross-Examination at p 81, ln 20 to p 82, ln 18.

PART II CANADA'S POSITION ON THE QUESTION IN ISSUE

60. Canada's position on the question of whether the *Act* is unconstitutional in whole or in part is as follows:

a. The whole *Act* is constitutional, as an exercise of Parliament's jurisdiction to legislate for the peace, order, and good government of Canada under s. 91 of the *Constitution Act, 1867* to address a matter of national concern. More particularly, the *Act* relates to establishing minimum national standards that are integral to reducing Canada's nationwide GHG emissions, which is a matter of national concern.

PART III ARGUMENT

A. Canadian constitutional law jurisprudence has firmly established Parliament's peace, order, and good government power to address matters of national concern

61. In the distribution of legislative powers, the framers of the *Constitution Act, 1867* gave Parliament the jurisdiction to make "laws for the peace, order, and good government of Canada, in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the legislatures of the provinces."[59] Subsequently, the national concern branch of Parliament's peace, order, and good government (POGG) power developed into a well-established aspect of Canadian constitutional jurisprudence.[60] This jurisprudence contradicts Alberta's assertion that clear judicial guidance is absent.[61]

62. Lord Watson first articulated the national concern branch in the *Local Prohibition* case, where he stated, "[t]heir Lordships do not doubt that some matters, in their origin local and provincial, might attain such dimensions as to affect the body politic of the Dominion, and to justify the Canadian Parliament in passing laws for their regulation".[62]

---

[59] (UK) 30 & 31 Victoria, c 3, s 91, ABBL, Vol 2, Tab 5.
[60] Peter W Hogg, *Constitutional Law of Canada*, 5th ed (Toronto: Carswell, 2007) (loose-leaf revision 2018-1) at pp 17-8 – 17-12, CBA, Vol 3, Tab 64.
[61] Alberta's Factum at paras 127-132.
[62] *Ontario (AG) v Canada (AG)*, [1896] AC 348 at 361, para 13 (QL), Alberta's Book of Authorities [**ABBA**], Vol 1, Tab 9.

63. More than 90 years later, in *Crown Zellerbach*, the Supreme Court comprehensively reviewed the jurisprudential evolution of the national concern branch of Parliament's POGG power. After confirming that the national concern branch is distinct from the national emergency branch, the Court set out criteria to be used in determining whether a matter constitutes a national concern, as follows:

> The national concern doctrine applies both to new matters which did not exist at Confederation and to matters which, although originally of a local or private nature in a province, have since … become matters of national concern;
>
> For a matter to qualify as a matter of national concern in either sense it must have a singleness, distinctiveness and indivisibility that clearly distinguishes it from matters of provincial concern and a scale of impact on provincial jurisdiction that is reconcilable with the fundamental distribution of powers under the Constitution;
>
> In determining whether a matter has achieved the required degree of singleness, distinctiveness and indivisibility that clearly distinguishes it from matters of provincial concern it is relevant to consider what would be the effect on extra-provincial interests of a provincial failure to deal effectively with the control or regulation of the intra-provincial aspects of the matter [also referred to as the "provincial inability" test].[63]

64. Parliament's POGG jurisdiction is not the antithesis of federalism.[64] There is no dispute that the principle of federalism must be respected. The *Crown Zellerbach* test reflects and respects fundamental principles of Canadian federalism and the equilibrium of the Constitution. At the same time, "[t]he Constitution must be interpreted flexibly over time to meet new social, political and historic realities",[65] "in a manner that is fully responsive to emerging realities".[66] Even Professor Lysyk, on whom Alberta relies, accepts that "it would be unwise to attempt to deprive Parliament of the means of responding to developments that

---

[63] *R v Crown Zellerbach Canada Ltd*, [1988] 1 SCR 401 at 423-34, paras 24-35 (QL) [***Crown Zellerbach***], ABBA, Vol 2, Tab 15.
[64] *Contra* the implication in Alberta's Factum at paras 130, 133-145.
[65] *Ward v Canada (Attorney General)*, 2002 SCC 17 at para 30, [2002] 1 SCR 569, CBA, Vol 1, Tab 19.
[66] *R v Hydro-Québec*, [1997] 3 SCR 213 at para 86 [***Hydro-Québec***], ABBA, Vol 2, Tab 13.

can neither be ascribed to the enumerated heads of federal power nor satisfactorily dealt with at the provincial level."[67]

65. Further, this case is not about Canada imposing its preferred policy measures.[68] Rather, it is about whether there is a "factual matrix that supports [Parliament's] assertion of a constitutionally significant transformation"[69] 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 proportional (reconcilable) impact on the balance of federalism.

B. Characterization of the *Act* – the *Act*'s pith and substance is the establishment of minimum national standards of stringency for GHG emissions pricing to reduce Canada's nationwide GHG emissions

66. The first step in any division of powers analysis is an inquiry into the true nature of the law to determine its essential character, or pith and substance.[70] Contrary to Alberta's submissions, determining the *Act*'s essential character and defining the matter to which it relates is critical to the national concern analysis.[71] Considering the law's purpose and its legal and practical effects helps identify its pith and substance.[72]

67. This analysis shows that the *Act*'s dominant purpose is to establish minimum national standards of stringency for GHG emissions pricing to reduce Canada's nationwide GHG emissions. Alberta's characterization of the *Act* as "regulating GHG emissions", without

---

[67] K Lysyk, "Constitutional Reform and the Introductory Clause of Section 91: Residual and Emergency Law-Making Authority" (1979) 57 Can Bar Rev 531 at 572, ABBA, Vol 4, Tab 32.
[68] *Contra* Alberta's Factum at paras 122-24 and 146-50.
[69] *Reference re Securities Act*, 2011 SCC 66 at para 115, [2011] 3 SCR 837 [***Securities Reference***], ABBA, Vol 3, Tab 25.
[70] *Reference re: Firearms Act (Can)*, 2000 SCC 31 at paras 15-16, [2000] 1 SCR 783 [***Firearms Reference***], CBA, Vol 1, Tab 15.
[71] *Reference re Greenhouse Gas Pollution Pricing Act*, 2019 SKCA 40 at para 71 [**SKCA Reasons**], ABBA, Vol 3, Tab 21. *Contra* Alberta's Factum at paras 112 and 113.
[72] *Securities Reference* at paras 63-64, ABBA, Vol 3, Tab 25; *Firearms Reference* at paras 16-18, CBA, Vol 1, Tab 15; *Quebec (AG) v Canada (AG)*, 2015 SCC 14 at paras 28-29, [2015] 1 SCR 693 [***Firearms Sequel***], ABBA, Vol 1, Tab 10; *Reference re Pan-Canadian Securities Regulation*, 2018 SCC 48 at para 86, [2018] 3 SCR 189 [***Pan-Canadian Securities***], ABBA, Vol 3, Tab 23.

further definition, disregards an essential feature of the *Act* – Parliament's "backstop" approach based on a stringency assessment of provincial or territorial systems.

68. A law's purpose may be determined by examining intrinsic evidence, such as the preamble and the structure of the statute, extrinsic evidence, such as a statute's legislative history and other accounts of the legislative process, and the context of its enactment.[73] All of these indicators confirm that the dominant purpose of the *Act* is to ensure GHG emissions pricing applies broadly throughout Canada, with increasing stringency over time, to create incentives for the behavioural changes necessary to reduce Canada's nationwide GHG emissions. More succinctly, the *Act*'s dominant purpose is to establish minimum national standards of stringency for GHG emissions pricing to reduce Canada's nationwide GHG emissions.[74]

69. The *Act*'s preamble affirms Parliament's motivations and intentions. Parliament explicitly notes the impact of GHG emissions on global climate change, the risks resulting from the high level of GHG emissions globally, and that the detrimental impacts of climate change are already being felt throughout Canada. Parliament acknowledges Canada's international law obligation to contribute to the global efforts to reduce GHG emissions in pursuit of the aims of the *Paris Agreement*, and confirms the Government's commitment to doing so. The preamble notes that "behavioural change … is necessary for effective action against climate change" and that pricing GHG "emissions on a basis that increases over time is an appropriate and efficient way to create incentives for that behavioural change". The preamble then notes that some provinces are developing or have implemented GHG emissions pricing systems. However, "the absence of greenhouse gas emissions pricing in some provinces and a lack of stringency in some provincial greenhouse gas emissions pricing systems could contribute to significant deleterious effects on the environment, including its biological diversity, on human health and safety and on economic prosperity". The preamble

---

[73] *Securities Reference* at para 64, ABBA, Vol 3, Tab 25; *Firearms Reference* at para 17, CBA, Vol 1, Tab 15.

[74] *Act*, Preamble, paras 8, 11-16, ss 166(2), 166(3), 189, ABBL, Vol 1, Tab 1; FINA, No 157 (23 May 2018) at 12-14, CBA, Vol 1, Tab 39; see paras 26-28, 31, 33-38, 40-47, and 49-50 above.

thus concludes that "it is necessary to create a federal greenhouse gas emissions pricing scheme to ensure that, taking provincial greenhouse gas emissions pricing systems into account, greenhouse gas emissions pricing applies broadly in Canada."[75]

70. In addition to creating the federal GHG emissions pricing scheme, an essential feature of the *Act*'s design is the Governor in Council's discretion in ss. 166 and 189 to determine where the *Act* operates. This discretion must be exercised for "the purpose of ensuring that the pricing of greenhouse gas emissions is applied broadly in Canada at levels that the Governor in Council considers appropriate" taking into account "the stringency of provincial pricing mechanisms for greenhouse gas emissions" as the primary factor (i.e. the "backstop"). It is clear from the context surrounding the *Act* and its legislative history that the Benchmark sets out the minimum national standards of stringency for assessing provincial systems.[76]

71. The *Act*'s effect aligns with its purpose. "The *effects* of a law include the legal effect of the text as well as practical consequences of the application of the statute".[77] Together, Parts 1 and 2 provide a complete and complementary system for pricing GHG emissions in a way that aims to minimize negative competitive impacts on EITE industries. The *Act*'s operation in provinces and territories that do not have a pricing scheme that meets the Benchmark ensures that GHG emissions pricing will apply throughout Canada, with increasing stringency over time, in keeping with the Benchmark price trajectory for explicit price-based systems. Thus, the *Act* provides the framework and a pricing system to establish minimum national standards of stringency for GHG emissions pricing to reduce Canada's nationwide GHG emissions.[78] This is its pith and substance.

72. Canada's characterization of the *Act* reflects the characterization by the majority of the Court of Appeal for Saskatchewan (SKCA) in the Saskatchewan reference and the characterization by Associate Chief Justice Hoy of the Court of Appeal for Ontario (ONCA)

---

[75] *Act*, Preamble, quotes from paras 11-12, 15-16, ABBL, Vol 1, Tab 1.
[76] CR, Vol 1, Tab 1, Moffet at para 117; see paras 26-28, 31, 34, 41-42, and 47 above; and *Order Amending Part 2 of Schedule 1 to the Greenhouse Gas Pollution Pricing Act*, SOR/2018-212, CBA, Vol 1, Tab 22.
[77] *Securities Reference* at para 64 (emphasis in original), ABBA, Vol 3, Tab 25.
[78] *Act*, Preamble, para 16, ABBL, Vol 1, Tab 1; see paras 40-48 above.

in her concurring reasons in the Ontario reference. The SKCA majority found that the pith and substance of the *Act* is "the establishment of minimum national standards of price stringency for GHG emissions."[79] Justice Hoy concluded that the pith and substance of the *Act* is "establishing minimum national greenhouse gas emissions pricing standards to reduce greenhouse gas emissions."[80] Canada accepts and endorses the SKCA majority's use of "stringency" standards because "stringency" is the language in the *Act* and it, like the Benchmark, embraces more than just the price per unit of GHG emissions. However, Canada's characterization also includes the GHG emissions reduction purpose, as Justice Hoy did in her characterization of the *Act*.[81]

73. Contrary to Alberta's suggestion, the *Act* is not comparable to the statute considered by the Supreme Court in *Reference Re Anti-Inflation Act*. That statute targeted a wide range of local economic matters, such as setting the price for products and services, and controlling wages. The *Act* bears no resemblance to the *Anti-Inflation Act* in the way it operates. The *Act* ensures that incentives for the behavioural changes necessary to reduce Canada's nationwide GHG emissions apply throughout Canada. It internalizes extra-provincial costs of GHG emissions, but it does not set the retail price of products. Sellers are free to choose whether to raise, maintain, or lower their prices, based on multiple factors, including how successfully they are able to reduce their GHG emissions, and thus make their own pricing decisions based on cost. Achieving efficiencies will be a competitive advantage.[82]

---

[79] SKCA Reasons at para 125 (per Richards, C.J., Jackson and Schwann, JJ.A.), ABBA, Vol 3, Tab 21.
[80] *Reference re Greenhouse Gas Pollution Pricing Act*, 2019 ONCA 544 at para 166 [**ONCA Reasons**], ABBA, Vol 3, Tab 20.
[81] SKCA Reasons at paras 125, 139, ABBA, Vol 3, Tab 21; CR, Vol 1, Tab 1, Moffet at paras 83-88; ONCA Reasons at para 175, ABBA, Vol 3, Tab 20.
[82] *Reference re Anti-Inflation Act*, [1976] 2 SCR 373, ABBA, Vol 2, Tab 17; CR, Vol 4, Dr. Rivers, Ex D at R1218. *Contra* Alberta's Factum at paras 117-119.

C. Classification of the *Act* – the *Act* comes within Parliament's peace, order, and good government jurisdiction to address a matter of national concern, namely establishing minimum national standards that are integral to reducing Canada's nationwide GHG emissions

i. Defining the matter of national concern

74. The second step in the division of powers analysis requires classification of the law's essential character by reference to the heads of power in the *Constitution Act, 1867*. Here, the *Act* comes under the national concern branch of Parliament's POGG power. The essential character of the *Act* relates to a matter of national concern: *establishing minimum national standards that are integral to reducing Canada's nationwide GHG emissions*.

75. Canada acknowledges that its definition of the matter has evolved in line with the majority reasons of the SKCA and ONCA, and those of Associate Chief Justice Hoy.[83] Throughout, however, Canada has consistently intended to capture only the national aspects of controlling Canada's nationwide contribution of GHG emissions to global climate change.

76. Supreme Court jurisprudence supports Canada's proposed definition of the matter of national concern. In the *Securities Reference*, the Supreme Court opined that "[l]egislation aimed at *imposing minimum standards applicable throughout the country* and preserving the stability and integrity of Canada's financial markets might well relate to trade as a whole."[84] The Supreme Court recently reiterated this statement in *Pan-Canadian Securities*.[85]

77. Canada's definition of the matter of national concern is narrower than the ONCA majority's definition, which was "establishing minimum national standards to reduce greenhouse gas emissions."[86] Canada's definition adds two qualifiers that will ensure provinces continue to have extensive jurisdiction to regulate emissions. The first is "integral", which limits Parliament's jurisdiction to establishing standards that will have a demonstrable impact on Canada's nationwide GHG emissions. The integrality concept is

---

[83] SKCA Reasons at paras 118-44, ABBA, Vol 3, Tab 21; ONCA Reasons at paras 70-77, 104-09, and 166-87, ABBA, Vol 3, Tab 20.
[84] *Securities Reference* at para 114 (emphasis added), ABBA, Vol 3, Tab 25.
[85] *Pan-Canadian Securities* at para 112, ABBA, Vol 3, Tab 23.
[86] ONCA Reasons at paras 77, 104, ABBA, Vol 3, Tab 20.

drawn from the SCC's decision in *Ontario Hydro*.[87] It imports a factual and contextual assessment of the extent to which the legislation in question is truly linked to reducing Canada's nationwide GHG emissions. A measure that is only tangentially related to reducing Canada's nationwide emissions would not qualify.

78. In this case, the evidentiary record before Parliament and this Court demonstrates the integrality of minimum national standards of stringency for GHG emissions pricing to reducing Canada's nationwide GHG emissions. Contrary to Alberta's submissions,[88] the case before this Court is not a policy debate. Rather, the evidence regarding the efficacy of carbon pricing, the estimated nationwide GHG emissions reductions resulting from increasingly stringent carbon pricing throughout Canada, and the international consensus that carbon pricing is essential to the global effort to limit GHG emissions is the factual foundation relied on by Parliament, confirming its rational basis for enacting the *Act*.[89]

79. The second qualifier is the reference to "Canada's nationwide" GHG emissions, which ensures that Parliament's jurisdiction is limited to truly national mitigation measures. It incorporates the provincial inability test into the definition of the subject matter itself. This will be explained further below in applying the *Crown Zellerbach* test to this subject matter.

80. With respect to Alberta's suggestion that a subject matter must be defined at a high level of generality,[90] Professor Hogg explains that a matter within the national concern branch of POGG must be "sufficiently specific to serve as a limited, justiciable restraint on

---

[87] *Ontario Hydro v Ontario (Labour Relations Board)*, [1993] 3 SCR 327 at 339-40, 352, 361-62, and 379-80 [***Ontario Hydro***], paras 2-3, 34, 56, and 84-86 (QL), ABBA, Vol 1, Tab 8.

[88] Alberta Factum at paras 122-23, 146-50, 207, 254-61, 264-70.

[89] See paras 20-22, 31, 37-39, 49-50 above; CR, Vols 1-3, Tab 1, Moffet at paras 54-58, 72, 112-14, 116, Exs O at R532, AA at R799, DD at R831; CR, Vol 4, Tab 5, Dr. Rivers, Ex C; SKCA Reasons at paras 147-48, ABBA, Vol 3, Tab 21; ONCA Reasons at paras 168-76, ABBA, Vol 3, Tab 20; *Provincial Court Judges' Assn of New Brunswick v New Brunswick (Minister of Justice); Ontario Judges' Assn v Ontario (Management Board); Bodner v Alberta; Conférence des juges du Québec v Quebec (Attorney General); Minc v Quebec (Attorney General)*, 2005 SCC 44 at paras 33-37, [2005] 2 SCR 286, CBA, Vol 1, Tab 14; *Firearms Reference* at para 18, CBA, Vol 1, Tab 15.

[90] Implicit in Alberta's Factum at paras 177, 179, 189, 195-99, and 286-87.

federal power".[91] Further, in *Munro v National Capital Commission*, the Supreme Court defined the subject matter as "the development, conservation and improvement of the National Capital Region in accordance with a coherent plan in order that the nature and character of the seat of the Government of Canada may be in accordance with its national significance."[92] Thus, it is entirely permissible to identify a POGG subject matter with regard to achieving a particular substantive objective. This also ensures that recognized matters of national concern are defined as narrowly as possible.

ii. Establishing minimum national standards that are integral to reducing Canada's nationwide GHG emissions is a matter of national concern

81. The *Crown Zellerbach* test involves a three-step analysis. The first consideration is whether there is a new matter, or a factual matrix that supports Parliament's assertion of a constitutionally significant transformation showing that a matter has attained such dimensions that it affects the nation as a whole. This step of the test captures the *raison d'être* of the national concern doctrine and is a significant threshold limit on Parliament's resort to its POGG power. Establishing minimum national standards that are integral to reducing Canada's nationwide GHG emissions meets this threshold question.

82. While the environment is too broad to be identified as a subject matter of national importance, the Supreme Court's repeated recognition of the importance of environmental protection provides overarching context. The Supreme Court has recognized that:

> ... our common future, that of every Canadian community, depends on a healthy environment. ... This Court has recognized that "(e)veryone is aware that individually and collectively, we are responsible for preserving the natural environment … environmental protection [has] emerged as a fundamental value in Canadian society"....[93]

---

[91] Peter W Hogg, *Constitutional Law of Canada*, 5th ed (Toronto: Carswell, 2007) (loose-leaf revision 2018-1) at p 15-8 CBA, Vol 3, Tab 64.

[92] *Munro v National Capital Commission*, [1966] SCR 663 at 671 [***Munro***], p 5 (QL), ABBA, Vol 1, Tab 7.

[93] *British Columbia v Canadian Forest Products Ltd*, 2004 SCC 38 at para 7, [2004] 2 SCR 74, CBA, Vol 1, Tab 2, citing *114957 Canada Ltée (Spraytech, Société d'arrosage) v Hudson (Town)*, 2001 SCC 40 at para 1, [2001] 2 SCR 241 [***Spraytech***], ABBA, Vol 1,Tab 1; see

83. The undisputed evidence before this Court conclusively demonstrates that GHG emissions, regardless of their origin, have extra-provincial and global impacts; they create a risk of harm to human health and the environment upon which life depends. Their detrimental impacts are significant and their reduction requires urgent, coordinated efforts, including federal action implementing minimum national standards that are integral to achieving nationwide emissions reductions.[94] As the SKCA majority recognized, "climate change caused by greenhouse gas (GHG) emissions is one of the great existential issues of our time."[95] The ONCA majority found the subject matter to be a new one because "the existential threat to human civilization posed by anthropogenic climate change was discovered" well after Confederation.[96] The Government of Canada was the first jurisdiction in Canada to publish a comprehensive climate change action plan, called the National Action Program on Climate Change.[97]

84. The *UNFCCC* and related international agreements evidence the international community's concern and Canada's obligations in respect of addressing Canada's nationwide contribution of GHG emissions to global climate change. With respect to paragraphs 212 and 213 of Alberta's Factum, Canada is not relying on the *UNFCCC* or the *Paris Agreement* as a source of expanded federal legislative powers. However, the "fact that a challenged law

---

also *Friends of the Oldman River Society v Canada (Minister of Transport)*, [1992] 1 SCR 3 at 16 [***Oldman River***], ABBA, Vol 1, Tab 4; *Ontario v Canadian Pacific Ltd*, [1995] 2 SCR 1031 at para 55, CBA, Vol 1, Tab 12.

[94] CR. Vols 1-2, Tab 1, Moffet at paras 6-50, Exs A-M; CR, Vol 3, Tab 2, Dr. Blain at para 8; see paras 9-18 above.

[95] SKCA Reasons at para 4, ABBA, Vol 3, Tab 21.

[96] ONCA Reasons at para 104, ABBA, Vol 3, Tab 20. See also, Spencer R Weart, *The Discovery of Global Warming* (Cambridge, MA: Harvard University Press, 2008) ch 1-2, CBA, Vol 3, Tab 65; James R. Fleming, *Historical Perspectives on Climate Change* (Oxford: Oxford University Press, 1998) ch 6, CBA, Vol 3, Tab 61.

[97] CR, Vol 4, Dr. Rivers, Ex D at R1215; Savage Cross-Examination at p 9, ln 5 to p 11, ln 16. *Contra* Alberta's Factum at para 32.

is related to Canada's international obligations is pertinent to its importance to Canada as a whole".[98]

85. Juxtaposing Canada's emissions reduction targets with Canada's emissions trends since 1990 demonstrates the necessity of a national approach. Historically, Canada has not been on track to meet its reduction targets. Canada's first target under the *UNFCCC*, which came into force in 1994, was to return Canada's emissions to 1990 levels. Canada's current target under the *Paris Agreement* is 30% below 2005 levels by 2030. Canada's GHG emissions in 2017 were 114 Mt CO_2e higher than 1990 levels, but 2% lower than in 2005. By 2030, Canada's nationwide annual emissions must be 205 Mt CO_2e lower than in 2017 to meet the current target. Canada is expected to show a progression in ambition by 2025.[99]

86. More generally, timely Canadian action is important to encourage global action to mitigate GHG emissions. Uncertainty in our domestic action on climate limits our ability and credibility to encourage other countries to take required action. Having this credibility and ability to encourage global action is critical as the rise in temperatures in Canada will be double the global average and even higher in the Arctic.

87. Given the role of GHG emissions in causing global climate change and the significant detrimental impacts of climate change throughout Canada, establishing minimum national standards that are integral to reducing Canada's nationwide GHG emissions is a matter of national and international concern.[100]

---

[98] *Crown Zellerbach* at 436-37, paras 37-38 (QL), ABBA, Vol 2, Tab 15; Peter W Hogg, *Constitutional Law of Canada*, 5th ed (Toronto: Carswell, 2007) (loose-leaf revision 2018-1) at p 11-18, CBA, Vol 3, Tab 64; ONCA Reasons at para 106, ABBA, Vol 3, Tab 20.
[99] CR, Vol 1, Tab 1, Moffet at paras 36, 40, 42, 44, 51-53; CR, Vol 3, Tab 2, Dr. Blain at paras 19, 22, Ex B at R1044-45.
[100] CR, Vols 1-2, Tab 1, Moffet at paras 7-34, Exs A-K; *Crown Zellerbach* at 436-37, paras 37-38 (QL), ABBA, Vol 2, Tab 15; Court of Appeal, The Hague, October 9, 2018, *Urgenda Foundation v The State of the Netherlands*, Case Number: 200.178.245/01 (The Netherlands) at paras 44, 45, 67, 71, CBA, Vol 1, Tab 18.

iii. Establishing minimum national standards that are integral to reducing Canada's nationwide GHG emissions is a single, distinct, and indivisible subject-matter

88. The second step in the *Crown Zellerbach* test asks whether the subject matter is "single, distinct, and indivisible", informed by the "provincial inability" test.[101] This criteria requires that there be a discernable distinction or dividing line between the subject matter over which Parliament has jurisdiction and matters that are local in nature, and thus within provincial jurisdiction. "Establishing minimum national standards that are integral to reducing Canada's nationwide GHG emissions" is a single, distinct, and indivisible subject matter. Its two essential defining elements limit the scope of Parliament's jurisdiction and provide a clear dividing line between federal and provincial jurisdiction.

89. Including "GHG emissions" as one of the core defining elements in the subject matter is consistent with the Supreme Court's jurisprudence. "[B]oth the majority and dissenting judgments in *Crown Zellerbach* support federal legislation that is appropriately targeted at reducing nationally and internationally significant environmental harm."[102]

90. In *Hydro-Québec*, the most recent Supreme Court case to consider whether environmental legislation could be upheld under the national concern branch of Parliament's POGG power, the judgment in which the national concern doctrine was applied turned on the manner in which the pollutant was defined. In *Hydro-Québec*, a majority of the Supreme Court upheld federal regulation of "toxic substances" under Part II of the former *CEPA* as a valid exercise of Parliament's criminal law power and did not consider the national concern doctrine. The dissent took the view that Part II could not be upheld under Parliament's criminal law power or under the national concern doctrine. The broad and amorphous definition of "toxic substance" in the former *CEPA* was central to the dissent's reasoning in *Hydro-Québec*. It found that there was "no analogous clear distinction between types of toxic

---

[101] *Crown Zellerbach* at 432-34, paras 34-35 (QL), ABBA, Vol 2, Tab 15.
[102] Nathalie Chalifour, "Canadian Climate Federalism: Parliament's Ample Constitutional Authority to Legislate GHG Emissions" (2016) 36 NJCL 331 at 365-67 [***Canadian Climate Federalism***], CBA, Vol 3, Tab 58.

substances, either on the basis of degree of persistence and diffusion into the environment and the severity of their harmful effect or on the basis of their extraprovincial aspects."[103]

91. In stark contrast, the subject matter and the *Act* target a distinct type of pollutant with indisputable persistence, atmospheric diffusion, harmful effects, and interprovincial aspects. GHG emissions are a discrete and distinct form of air pollution. The *UNFCCC* and subsequent international agreements explicitly define and identify GHGs based on specific scientific characteristics, including their global warming potential. GHG emissions are a measurable and persistent atmospheric pollutant. Their interprovincial, national, and global effects are well established.[104] While many sectors generate GHG emissions, setting minimum national standards integral to reducing Canada's nationwide GHG emissions affects only one specific aspect of those sectors – the GHG emissions they generate – which is constitutionally permissible.[105]

92. The second core defining element is captured by the remainder of the subject matter label: *establishing minimum national standards that are integral to reducing Canada's nationwide GHG emissions*. As noted above, this element incorporates the provincial inability test into the definition of the subject matter. Properly considered and applied, the provincial inability test is a substantial limit on the scope of Parliament's jurisdiction.

a. The "provincial inability" test defines and limits the scope of Parliament's jurisdiction

93. The "provincial inability" test both confirms Parliament's jurisdiction to establish minimum national standards that are integral to reducing Canada's nationwide GHG emissions and defines the limits of the resulting federal and provincial spheres of authority. The "provincial inability" test asks "what would be the effect on extra-provincial interests of a provincial failure" to regulate the matter, which assists "in determining whether a matter has the requisite singleness or indivisibility from a functional as well as a conceptual point

---

[103] *Hydro-Québec* at paras 68-70, 75, 110, 161, ABBA, Vol 2, Tab 13.
[104] CR Vols 1-2, Tab 1, Moffet at paras 7-8, 35-53, 69, 127, Ex E at R256, Exs L and M.; CR, Vol 3, Tab 2, Dr. Blain generally, esp paras 7-8, 17-20, 22.
[105] *General Motors of Canada Ltd v City National Leasing*, [1989] 1 SCR 641 at 669-70 [***General Motors***], CBA, Vol 1, Tab 4.

of view."[106] This test does not ask whether provinces can constitutionally address GHG emissions, or whether provinces are taking steps to reduce GHG emissions. Canada agrees with Alberta that provinces can and do address GHG emissions under various provincial heads of power. Rather, the test asks what would be the effect on extra-provincial interests of a provincial failure to do so.

94. The "provincial inability" test distinguishes minimum national standards that are integral to reducing Canada's nationwide GHG emissions from provincial matters for constitutional purposes. Parliament's jurisdiction to address this matter of national concern is limited to the national aspects of the problem. In other words, to be valid, a federal legislative measure addressing this subject matter must not only be substantively related to reducing Canada's nationwide GHG emissions, it must implement a national measure for which the failure to include one or more provinces or territories would jeopardize its successful operation in other parts of the country. Contrary to Alberta's argument, Parliament's jurisdiction over this subject matter does not create concurrent jurisdiction over a subject matter that the provinces are constitutionally able to address.[107] Such legislation transcends provincial constitutional competence. It is "qualitatively different from anything that could practically or constitutionally be enacted by the individual provinces either separately or in combination"[108] because it protects against the ability of provinces to resile from an interprovincial scheme to the detriment of other provinces in Canada's federation.

95. The "provincial inability" test as a limit on the scope of the matter is inherent in the words of s. 91, which provide for Parliament's POGG power. This power ensures that there are no jurisdictional vacuums in the division of powers. Denying Parliament jurisdiction to establish minimum national standards that are integral to reducing Canada's nationwide GHG emissions would leave a gaping hole in the Constitution in terms of powers to implement

---

[106] *Crown Zellerbach* at 433-34, para 35 (QL), ABBA, Vol 2, Tab 15.
[107] Contra Alberta's Factum at paras 161, 196-201.
[108] *Attorney General of Canada v Canadian National Transportation Ltd*, [1983] 2 SCR 206 at 267 [***Canadian National Transportation***], CBA, Vol 1, Tab 1; *Pan-Canadian Securities* at para 101, ABBA, Vol 3, Tab 23.

national GHG emissions mitigation measures to address the existential threat of climate change.

96. In 1976, Professor Gibson identified "provincial inability" as an organizing principle for the courts' early national concern decisions, positing that a "national dimension" exists when "a significant aspect of a problem is beyond provincial reach".[109] The Supreme Court then conceptually adopted "provincial inability" into the test for a matter of national concern and concurrently incorporated it into the test for the general branch of the trade and commerce power. Although the two powers are different, they share many similar characteristics. Thus, the Supreme Court's jurisprudence on provincial inability in respect of the general trade and commerce power is instructive.

97. In *Crown Zellerbach*, the Supreme Court traced the evolution of the provincial inability test in relation to Parliament's power to address matters of national concern. The Supreme Court first mentioned the provincial inability test in *Labatt Breweries*, a case that considered both Parliament's general trade and commerce power and the national concern doctrine. In its discussion of the latter, the Court quoted Professor Hogg's articulation of the provincial inability concept in his 1977 (first) edition of *Constitutional Law of Canada*: "the most important element of national dimension or national concern is a need for one national law which cannot realistically be satisfied by cooperative provincial action because the failure of one province to cooperate would carry with it grave consequences for the residents of other provinces."[110]

98. In *Schneider*, referencing Professor Gibson, the Supreme Court found that the problem of heroin dependency is not a matter of national concern, as distinct from illegal trade in drugs, based on the provincial inability test. The Supreme Court reasoned that "[f]ailure by one province to provide treatment facilities will not endanger the interests of another province."[111] *Schneider* demonstrates how the provincial inability test draws a line

---

[109] Dale Gibson, "Measuring National Dimensions", (1976) 7 Man LJ 15 at 33-37, CBA, Vol 3, Tab 62.
[110] *Crown Zellerbach* at 427-31, paras 30-32 (QL), ABBA, Vol 2, Tab 15; *Labatt Breweries of Canada Ltd v Attorney General of Canada*, [1980] 1 SCR 914 at 945, CBA, Vol 1, Tab 8.
[111] *Schneider v The Queen*, [1982] 2 SCR 112 at 131-32, CBA, Vol 1, Tab 16; *Crown Zellerbach* at 428-29, para 31 (QL), ABBA, Vol 2, Tab 15.

between matters that are local in nature and those that are federal. Thus, contrary to Alberta's assertion, the ONCA majority's view that "minimum national standards to reduce GHG emissions" is a matter of national concern is not tautological. That opinion was not based on the fact that only a national government can legislate nationally. Rather, the analysis rightly focused on the detrimental interprovincial impacts that would result from a province's failure to act.[112]

99. A year after *Schneider*, the Supreme Court released its decision in *Canadian National Transportation*, in which Justice Dickson, writing for a minority of the Court, added the "provincial inability" factors as *indicia* of a valid regulation of general trade and commerce. In *General Motors*, the Court unanimously adopted Justice Dickson's reasons, setting out these *indicia* as the fourth and fifth factors of the test that still governs the scope of s. 91(2) today. The fourth factor is whether the provinces, acting alone or in concert, would be constitutionally incapable of passing such an enactment. Under this factor, the court should consider the possibility that each province "retain[s] the ability to resile from an interprovincial scheme". The fifth factor is whether the failure to include one or more provinces or localities would jeopardize successful operation in other parts of the country.[113]

100. The Supreme Court's pronouncements concerning provincial inability in the context of Parliament's general trade and commerce power are instructive in defining the limits of Parliament's jurisdiction here. In *Reference re Securities Act*, the Court concluded that the federal legislation was *ultra vires* because it represented a "wholesale takeover of the regulation of the securities industry". However, the Court noted that the "need to prevent and respond to systemic risk may support federal legislation pertaining to the national problem raised by this phenomenon". This possibility was confirmed in *Pan-Canadian Securities*, when the Court judged the draft cooperative system securities legislation to be

---

[112] ONCA Reasons at paras 115-23, ABBA, Vol 3, Tab 20; Contra Alberta's Factum at paras 202-05, 222.

[113] *Canadian National Transportation* at 268, CBA, Vol 1, Tab 1; *General Motors* at 662, CBA, Vol 1, Tab 4; *Securities Reference* at paras 108, 118-21 (quote at para 119), ABBA, Vol 3, Tab 25; *Pan-Canadian Securities* at paras 101-03, 113-15, ABBA, Vol 3, Tab 23. Considering a province's ability to resile from an interprovincial scheme is also consistent with the decision in *Munro*, ABBA, Vol 1, Tab 7.

valid. The cooperative scheme includes uniform provincial and territorial legislation, federal legislation, a national regulator, and a Council of Ministers. The draft federal legislation deals with offences associated with securities and monitoring and prevention of systemic risk, thereby implementing the approach suggested by the Court in its 2011 opinion.[114]

101. The Supreme Court's jurisprudence on provincial inability in the general trade context shows how the general branch of the trade and commerce power can be validly exercised in respect of the national aspects of a larger subject matter, with the local aspects remaining within provincial jurisdiction. Here, restricting the matter to establishing minimum national standards integral to reducing Canada's nationwide GHG emissions reflects the approach taken to provincial inability in the Securities References. Parliament has jurisdiction over this subject matter of national concern, while the provinces have jurisdiction over the local aspects of reducing GHG emissions. The provincial inability test operates in the same way for the national concern doctrine as it does for the general branch of the trade and commerce power.

b. A provincial failure to meet minimum national standards that are integral to reducing Canada's nationwide GHG emissions will negatively affect extra-provincial interests

102. The subject matter and the *Act* meet the provincial inability test. Indeed, the provincial inability test is embedded in Canada's proposed matter of national concern: no single province or territory can constitutionally legislate minimum national standards that are integral to reducing Canada's nationwide GHG emissions.

103. At its highest level, a provincial failure to implement measures that are integral to reducing Canada's nationwide GHG emissions will adversely affect extra-provincial interests[115] because reducing Canada's nationwide GHG emissions is a prerequisite to being

---

[114] *Securities Reference* at paras 118-30, ABBA, Vol 3, Tab 25; *Pan-Canadian Securities* at paras 106-07, 113-16, ABBA, Vol 3, Tab 23. See also *Ontario Hydro* at 339-40, 422-25, paras 2, 179-82 (QL) ABBA, Vol 2, Tab 17.

[115] *Pan-Canadian Securities* at paras 113-16, ABBA, Vol 3, Tab 23; *Interprovincial Co-Operatives Ltd et al v R*, [1976] 1 SCR 477 at 516 [***Interprovincial Co-Operatives***], CBA, Vol 1, Tab 7; *Canadian Climate Federalism* at 367-69, CBA, Vol 3, Tab 58.

able to influence the international agenda and thereby get the global action needed to prevent catastrophic outcomes of climate change. "It is a notorious fact that air is not impounded by provincial boundaries."[116] In the case of GHG emissions, this is compounded by their contribution to global climate change regardless of the location of their source. Comparing New Brunswick's and Saskatchewan's GHG emissions is demonstrative. Since 2005, New Brunswick's emissions have decreased by 6 Mt CO_2e, while Saskatchewan's GHG emissions have increased by 10 Mt CO_2e.[117] Saskatchewan's increase exceeds New Brunswick's reduction, yet New Brunswick is constitutionally unable to enact legislation aimed at reducing Canada's nationwide GHG emissions.

104. More specifically, federal legislation in relation to establishing minimum national standards that are integral to reducing Canada's nationwide GHG emissions must implement a national measure for which the failure to include one or more provinces would jeopardize its successful operation in other parts of the country. Contrary to Alberta's repeated assertion, recognizing this subject matter does not give Parliament a "supervisory jurisdiction";[118] it ascribes to Parliament exactly the type of residual jurisdiction contemplated by the POGG power in s. 91 of the *Constitution Act, 1867*.

105. The *Act* helps demonstrate the focused nature of the concern. The failure of some provinces to implement carbon pricing that meets minimum national standards of stringency undermines the GHG emissions pricing measures taken by the rest. Interprovincial carbon leakage is a potential negative impact of inconsistent GHG emissions pricing among provinces; it could jeopardize the successful operation of carbon pricing in other parts of the country. While Alberta's evidence overstates the likelihood of international emissions leakage that may result from a carbon price in Alberta, the risk of interprovincial carbon leakage supports federal action. "By reducing cross-province differences in climate policies,

---

[116] *Canada Metal Co v R* (1982), 144 DLR (3d) 124 (Man QB) at para 16, CBA, Vol 1, Tab 3.
[117] CR, Vol 3, Tab 2, Dr. Blain at para 22.
[118] Alberta's Factum at paras 4, 12, 102, 123, 124, 201, 207, 268, 280.

[the federal backstop] will help to reduce intra-national emission leakage."[119] The Constitution must be interpreted in a manner that ensures that a matter of national concern with the gravity of the current crisis may be addressed, and not in a way that prioritizes an economic race to the bottom.

iv. Parliament's jurisdiction to establish minimum national standards that are integral to reducing Canada's nationwide GHG emissions has a scale of impact on provincial jurisdiction that is reconcilable with the fundamental distribution of legislative powers

106. The final step in the *Crown Zellerbach* test, which asks whether the scale of impact on provincial jurisdiction resulting from Parliament's jurisdiction over the subject matter is reconcilable with the fundamental distribution of powers under the Constitution, is met.[120] Recognizing Parliament's POGG jurisdiction over "establishing minimum national standards that are integral to reducing Canada's nationwide GHG emissions" as a matter of national concern does not skew the constitutional distribution of powers. The scale of impact on provincial jurisdiction is reconcilable with the balance of federal and provincial legislative powers and, thus, respects the principles of federalism and subsidiarity.

107. Alberta's arguments in relation to this element of the *Crown Zellerbach* test can be sorted into two broad categories – assertions that Parliament's jurisdiction over this matter either (1) authorizes federal overreach into areas of provincial jurisdiction or (2) will displace areas of provincial jurisdiction. However, well-established constitutional doctrines refute both assertions. First, precise definition of the matter of national concern and a careful pith and substance analysis prevents federal overreach into local provincial matters. As the ONCA majority opined, "federal jurisdiction in this field is narrowly constrained to address

---

[119] CR, Vol 4, Tab 5, Dr. Rivers at para 11, Ex D at R1209, 1223-24; CR, Vols 1-2, Tab 1, Moffet at paras 54-60, 67, 73, 76, Ex R at R602; ABR, Vol 7, Savage, Ex CCCC at A2616-17, 2655, 2668-69; ENEV, No 44 (1-3 May 2018) at 44:14 (Philippe Giguère, Manager, Legislative Policy, ECCC), 44:20-21 (Moffet), 44:30-32 (Peter Boag, President and CEO, Canadian Fuels Association), and 44:65-68 (Adam Auer, Vice President, Environment and Sustainability, Cement Association of Canada), CBA, Vol 2, Tab 45; ONCA Reasons at para 120, ABBA, Vol 3, Tab 20; SKCA Reasons at para 155, ABBA, Vol 3, Tab 21. *Contra* Alberta's Factum at 261-264.

[120] *Crown Zellerbach* at 432, para 33 (QL), ABBA, Vol 2, Tab 15.

the risk of provincial inaction"[121] regarding measures that are integral to reducing Canada's nationwide GHG emissions. As discussed above, the matter of national concern that Canada asks this court to recognize is even narrower than the one accepted by the ONCA.

108. Second, the double aspect doctrine and the narrow interpretation of the paramountcy doctrine ensure robust provincial jurisdiction. Parliament's jurisdiction over this subject matter "leaves ample scope for provincial legislation in relation to [GHG regulation]",[122] just as the *Act* enables provincial carbon pricing systems. Neither the subject matter nor the *Act* impair provincial legislative powers, including provinces' jurisdiction over the development, conservation, and management of natural resources and electricity generation under s. 92A(1) of the *Constitution Act, 1867*.

a. The narrow matter of national concern and the pith and substance doctrine preclude federal overreach

109. Parliament's jurisdiction to enact minimum national standards that are integral to reducing Canada's nationwide GHG emissions does not result in a broad expansion of Parliament's authority.[123] The narrow definition of the matter of national concern is the starting point for this analysis. The pith and substance doctrine dictates that Parliament's jurisdiction over this subject matter would only permit laws, like the *Act*, that have this matter as their dominant purpose. As noted above, the requirement that any minimum national standards be *integral* to the objective of the subject matter is an important limitation. This requires a factual and contextual assessment of the extent to which any minimum national standard is fundamentally directed to reducing Canada's nationwide GHG emissions. For the *Act*, the national and international expert evidence is convergent in finding that pricing carbon is an essential measure for reducing GHG emissions. The evidence demonstrates that increasingly stringent carbon pricing throughout Canada will reduce Canada's total annual emissions by 50-60 Mt by 2022. A reduction of this magnitude is patently integral to reducing Canada's nationwide GHG emissions.

---

[121] ONCA Reasons at paras 4, 131-133, ABBA, Vol 3, Tab 20.
[122] ONCA Reasons at paras 4, 130, ABBA, Vol 3, Tab 20.
[123] Contra Alberta's Factum at paras 209, 229-236, 284.

110. The national focus of the matter is an additional limit on its scope. The pith and substance of any permissible federal legislation must relate to truly national standards, not purely local ones. The doctrine of colourability would ensure that federal legislation cannot take over areas of provincial jurisdiction under the pretext of purporting to legislate to establish national standards integral to reducing Canada's nationwide GHG emissions.[124]

111. Any future legislation remains challengeable on division of powers grounds. "Inherent in a federal system is the need for an impartial arbiter of jurisdictional disputes over the boundaries of federal and provincial powers… That impartial arbiter is the judiciary, charged with 'control[ling] the limits of the respective sovereignties'".[125] The ONCA majority expressed precisely this point when, contrary to Alberta's assertion, it opined that the subject matter "does not result in a massive transfer of broad swaths of provincial jurisdiction to Canada".[126]

b. The double aspect doctrine and the narrow interpretation of the paramountcy doctrine ensure robust provincial jurisdiction

112. Parliament's jurisdiction to establish minimum national standards that are integral to reducing Canada's nationwide GHG emissions will not impair a provincial legislature's power to continue regulating all aspects of local matters, including in relation to intra-provincial activities that generate GHG emissions. Consistent with the dominant tide of constitutional doctrines, the double aspect doctrine applies to matters of national concern in the same way it applies to other exclusive federal heads of power under s. 91. Similar laws can be validly enacted by both Parliament and provincial legislatures, and concurrently applied, where "[t]he federal law pursues an objective that in pith and substance falls within Parliament's jurisdiction, while the provincial law pursues a different objective that falls within provincial jurisdiction."[127] GHG emission mitigation measures, including carbon

---

[124] *Goodwin v British Columbia (Superintendent of Motor Vehicles)*, 2015 SCC 46 at para 23, [2015] 3 SCR 250, CBA, Vol 1, Tab 5.
[125] *Securities Reference* at para 55, ABBA, Vol 3, Tab 25.
[126] ONCA Reasons at para 133, ABBA, Vol 3, Tab 20. Contra Alberta's Factum at paras 225-27.
[127] *Pan-Canadian Securities* at para 114, ABBA, Vol 3, Tab 23; *Securities Reference* at para 66, ABBA, Vol 3, Tab 25; *Law Society of British Columbia v Mangat*, 2001 SCC 67 at paras

pricing, have a double aspect. The modern approach to federalism recognizes that areas of overlapping powers are unavoidable.[128]

113. Contrary to Alberta's submissions,[129] the constitutional concept of exclusivity does not have some superordinate meaning under Parliament's power to address matters of national concern, unlike any other constitutional head of power. Parliament's POGG power to address matters of national concern is no more exclusive than Parliament's enumerated constitutional powers. An exclusive power is not a full and complete occupation of a subject matter by one level of government to the exclusion of the other.[130] The Supreme Court made this clear in *Ontario Hydro*:

> Parliament's power under s. 91 of that Act to make laws for the peace, order and good government of Canada (the "p.o.g.g." power), is not "plenary". Rather, federal jurisdiction over such works [nuclear generating stations] must be carefully described to respect and give effect to the division of legislative authority on which our federal constitutional scheme is based.[131]

114. The double aspect doctrine ensures continued space for the operation of provincial laws enacted under provincial heads of power, including where those powers are exercised in a manner that addresses GHG emissions. The *Pan-Canadian Framework* outlines extensive complementary measures in relation to electricity generation, construction

---

23, 49, [2001] 3 SCR 113, CBA, Vol 1, Tab 9; *Ontario Hydro* at 339-40, para 2 (QL), ABBA, Vol 1, Tab 8; Morris J. Fish, "The Effect of Alcohol on the Canadian Constitution … Seriously" (2011) 57 McGill LJ 189 at 204-05, CBA, Vol 3, Tab 60; Stewart Elgie, "Kyoto, the Constitution, and carbon trading: waking a sleeping BNA bear (or two)" (2007-08) 13:1 Rev Const Stud 67 at 81-90, esp 87-8, CBA, Vol 3, Tab 59; Peter W Hogg, "Constitutional Authority over Greenhouse Gas Emissions", (2009) 46:2 Alta L Rev 507 at 510-11, CBA, Vol 3, Tab 63; *Canadian Climate Federalism* at 399-400, CBA, Vol 3, Tab 58; contra Alberta's Factum at paras 161-65, 199, 227-28, 285.

[128] *Canadian Western Bank v Alberta*, 2007 SCC 22 at paras 26, 28-30, 36, 42, [2007] 2 SCR 3 [***Canadian Western Bank***], ABBA, Vol 1, Tab 3.

[129] Alberta's Factum at paras 161-65, 199, 227-28, 285.

[130] *Crown Zellerbach* at 434, para 35 (QL), ABBA, Vol 2, Tab 15; *Multiple Access Ltd v McCutcheon*, [1982] 2 SCR 161 at 174-76, CBA, Vol 1, Tab 11; *Reference re Assisted Human Reproduction Act*, 2010 SCC 61, [2010] 3 SCR 457 at paras 182-185, ABBA, Vol 2, Tab 18; *Rogers Communications v Châteauguay (City)*, 2016 SCC 23, [2016] 1 SCR 467 [***Rogers***] at paras 37-38, ABBA, Vol 4, Tab 27.

[131] *Ontario Hydro* at 339-40, 424-25, paras 2, 181-82 ABBA, Vol 1, Tab 8.

practices, transportation, industry, forestry, agriculture, and waste management,[132] which are within the provinces' jurisdiction.

115. Provincial legislation that is, in pith and substance, directed towards these matters may validly include GHG emissions mitigation measures. Federal statutes establishing minimum national standards that are integral to reducing Canada's nationwide GHG emissions and provincial statutes regulating GHG emissions as a local matter can coexist provided the provincial law does not directly conflict with or frustrate the purpose of a federal law. Together with the narrow modern interpretation of the paramountcy doctrine,[133] an appropriately circumscribed matter of national concern ensures a robust and continued provincial jurisdiction over intra-provincial aspects of GHG emissions, even when they overlap with measures enacted under Parliament's power to legislate for the peace, order, and good government of Canada. As the Supreme Court has stated, when "courts apply the various constitutional doctrines, they must take into account the principle of co-operative federalism, which favours, where possible, the concurrent operation of statutes enacted by governments at both levels."[134]

116. While it is the scale of impact of the subject matter that a court must consider under this step of the *Crown Zellerbach* test, the current Canadian legal landscape demonstrates how the double aspect doctrine applies. Provincial systems, such as BC's carbon tax, Quebec's cap-and-trade system, and Alberta's *CCIR*, employ carbon pricing to reduce provincial GHG emissions. In pith and substance, however, they are not aimed at the matter of national concern. Alberta's *CCIR* and provincial cap-and-trade systems like Quebec has enacted fit within ss. 92(13), 92(16), or 92A. BC's carbon tax is direct taxation. None of these systems are directed at "minimum national standards". Instead, given their purpose and effect, they address matters of provincial competence, namely intra-provincial activity

---

[132] CR, Vol 1, Tab 1, Moffet at paras 90-92; ABR, Vol 8, Savage, Ex JJJJ at A2925-42.
[133] *Orphan Well Association v Grant Thornton Ltd*, 2019 SCC 4 at paras 64-66, CBA, Vol 1, Tab 13.
[134] *Rogers* at para 38, ABBA, Vol 4, Tab 27; *Marine Services International Ltd. v Ryan Estate*, 2013 SCC 44 at para 50, [2013] 3 SCR 53, CBA, Vol 1, Tab 10; *General Motors* at 669-70, CBA, Vol 1, Tab 4; *Firearms Sequel* at paras 17-21, ABBA, Vol 1, Tab 10; *Canadian Western Bank* at paras 54-75, ABBA, Vol 1, Tab 3; *Spraytech* at paras 34, 35, ABBA, Vol 1, Tab 1.

that generates GHG emissions. Accordingly, provincial GHG reduction measures remain valid and operable exercises of provincial jurisdiction.

117. The *Act* also helps demonstrate how "minimum national standards" as part of the subject matter's definition limits its impact on provincial jurisdiction. Specifically, the *Act*'s backstop architecture is designed to minimize the possibility of conflict, while ensuring that carbon pricing meeting minimum national standards of stringency and scope applies throughout Canada. The *Act* supports provincial GHG emissions pricing schemes, and responds to provincial or territorial inaction. Contrary to Alberta's assertion,[135] the coexistence of provincial GHG emissions pricing schemes with the *Act* does not turn the establishment of minimum national standards that are integral to reducing Canada's nationwide GHG emissions into a local matter.

c. Parliament's authority to establish minimum national standards that are integral to reducing Canada's nationwide GHG emissions is consistent with section 92A of the *Constitution Act, 1867*

118. Parliament's POGG power to establish minimum national standards that are integral to reducing Canada's nationwide GHG emissions is consistent with s. 92A of the *Constitution Act, 1867*. While Alberta is correct that the enactment of s. 92A was accomplished, in part, through the efforts of some provinces to confirm and strengthen provincial jurisdiction in relation to natural resources, Alberta's description of the historical and constitutional context is incomplete, and its characterization of the jurisdictional reach of s. 92A is overbroad. Both the legislative history and the jurisprudential treatment of s. 92A confirm that the provision does not interfere with Parliament's legislative competence under POGG.[136]

119. The legislative history of s. 92A shows that its enactment served two purposes. First, s. 92A(1) confirmed existing provincial ownership and control over non-renewable natural resources, which had been conclusively granted to all provinces in 1930.[137] Second,

---

[135] Alberta's Factum at paras 185, 210-11.
[136] Contra Alberta's Factum at paras 103-09, 139-45, 251-53.
[137] Special Joint Committee of the Senate and of the House of Commons on the Constitution of Canada, *Evidence*, 32-1, No 39 (16 January 1981) at 39:4-6 (Hon. Jean Chrétien, Minister of Justice and Attorney General of Canada) [***Special Joint Committee***], CBA, Vol 2, Tab 52;

ss. 92A(2)-(4) granted concurrent legislative authority to the provinces in two spheres related to natural resources: (i) interprovincial trade, subject to federal paramountcy; and (ii) indirect taxation.[138] Some provinces had sought greater legislative authority in this field (offshore resources and international trade). Some provinces also attempted to incorporate into s. 92A additional limits on federal authority. Specifically, Alberta asked for federal authority over interprovincial trade to be limited to situations of national emergency. However, the federal government did not agree and these limits were not part of the negotiated deal for s. 92A.[139]

120. With respect to s. 92A(1) specifically, federal government officials made it clear during the legislative process that this new provision was not intended to affect existing federal legislative authority, either under the enumerated federal powers in s. 91 or under POGG.[140]

---

see also: *Special Joint Committee*, No 37 (14 January 1981) at 37:11-12, CBA, Vol 2, Tab 50; No 38 (15 January 1981) at 38:28-30, CBA, Vol 2, Tab 51; No 53 (4 February 1981) at 53:85-86 (Hon. Jean Chrétien, Minister of Justice and Attorney General of Canada), CBA, Vol 2, Tab 55.

[138] *Special Joint Committee*, No 50 (31 January 1981) at 50:81 (Hon. Jean Chrétien, Minister of Justice and Attorney General of Canada), CBA, Vol 2, Tab 54; see also: *House of Commons Debates*, 32-1, No 4 (23 October 1980) at 3968 (Rt Hon. P.E. Trudeau, Prime Minister of Canada), CBA, Vol 2, Tab 25; *Special Joint Committee*, No 2 (7 November 1980) at 2:47, CBA, Vol 2, Tab 48; No 4 (13 November 1980) at 4:107, CBA, Vol 2, Tab 49; No 39 (16 January 1981) at 39:4-10, CBA, Vol 2, Tab 52; No 49 (30 January 1981) at 49:28, CBA, Vol 2, Tab 53; No 54 (5 February 1981) at 54:19-23, 84-85 (Hon. Jean Chrétien, Minister of Justice and Attorney General of Canada, and Mr. B. L. Strayer, Q.C., Assistant Deputy Minister, Public Law, Department of Justice), CBA, Vol 2, Tab 56.

[139] *Special Joint Committee*, No 38 (15 January 1981) at 38:93-94, 103-107 (Hon. Jean Chrétien, Minister of Justice and Attorney General of Canada), CBA, Vol 2, Tab 51; No 53 (4 February 1981) at 53:77-84, 97, CBA, Vol 2, Tab 55; No 54 (5 February 1981) at 54:8-11, CBA, Vol 2, Tab 56; Report of the Continuing Committee of Ministers on the Constitution to First Ministers, *Resource Ownership and Interprovincial Trade*, Doc 800-14 (Ottawa: 8-12 September 1980), CBA, Vol 2, Tab 57.

[140] *Special Joint Committee*, No 54 (5 February 1981) at 54:57-58, 75-76 (Mr. B. L. Strayer, Q.C., Assistant Deputy Minister, Public Law, Department of Justice), CBA, Vol 2, Tab 56; see also: *Special Joint Committee*, No 54 (5 February 1981) at 54:19-20, 29-30, 33, 60, 72-75 (Hon. Jean Chrétien, Minister of Justice and Attorney General of Canada, and Mr. B. L. Strayer, Q.C., Assistant Deputy Minister, Public Law, Department of Justice), CBA, Vol 2, Tab 56.

121. The Supreme Court's interpretation of s. 92A is consistent with the intent of the provision's drafters. As La Forest J. observed in *Ontario Hydro*, s. 92A(1) responded to provincial insecurity by restating pre-existing provincial powers in contemporary terms, with the other provisions in s. 92A authorizing the provinces, for the first time, to legislate in the areas of interprovincial trade and indirect taxation.[141] As to whether s. 92A affected federal legislative authority under POGG, La Forest J. opined: "I cannot believe it was meant to interfere with the paramount power vested in Parliament by virtue of the declaratory power (or for that matter Parliament's general power to legislate for the peace, order and good government of Canada)".[142]

d. Parliament's authority to establish minimum national standards that are integral to reducing Canada's nationwide GHG emissions respects underlying constitutional principles

122. There is no dispute that federalism is one of the foundational principles underlying Canada's constitution. However, the federalism principle "does not mandate any specific prescription for how governments within a federation should exercise their constitutional authority."[143] It does not alter the text of the *Constitution Act, 1867*, which remains supreme,[144] and does not prevent Parliament from enacting legislation validly addressing a matter of national concern. Neither federalism nor the principle of subsidiarity can, in the abstract, render federal legislation unconstitutional regardless of its pith and substance or fit with s. 91 of the *Constitution Act, 1867*.

---

[141] *Ontario Hydro* at 376-78, paras 79-82 (QL), ABBA, Vol 1, Tab 8.
[142] *Ontario Hydro* at 378, para 83 (QL), ABBA, Vol 1, Tab 8; see also: *Westcoast Energy Inc v Canada (National Energy Board)*, [1998] 1 SCR 322 at paras 80-84 (per Iacobucci and Major JJ), CBA, Vol 1, Tab 20. Relying on La Forest J's reasons in *Ontario Hydro*, Iacobucci and Major JJ concluded, at para 84: "Nothing in s. 92A was intended to derogate from the pre-existing powers of Parliament."
[143] *R v Comeau*, 2018 SCC 15 at para 87, [2018] 1 SCR 342, ABBA, Vol 2, Tab 14.
[144] *Firearms Sequel* at para 18, ABBA, Vol 1, Tab 10; *Reference re Secession of Quebec*, [1998] 2 SCR 217 at para 53, ABBA, Vol 3, Tab 24; see also: *Securities Reference* at para 62, ABBA, Vol 3, Tab 25.

123. Alberta's reliance on the principle of subsidiarity[145] is misplaced. This principle does not support provincial jurisdiction over a subject matter that a province is constitutionally unable to address.[146] In short, the principle of subsidiarity does not assist Alberta's argument.

124. With respect to Alberta's listing of enumerated federal heads of power to regulate GHG emissions,[147] it is already well established that Parliament's legislative powers, including its POGG power to legislate on matters of national concern, can embrace specific environmental matters in appropriate circumstances. One of those circumstances is where a defined type of pollution cannot be contained within geographic boundaries.[148] Recognizing "establishing minimum national standards that are integral to reducing Canada's nationwide GHG emissions" as a matter of national concern will not alter the balance of legislative power under the Constitution. Federal jurisdiction to legislate as a matter of national concern provides Parliament with a flexible tool, reflecting the scale of the problem.

125. The legislation at issue encourages provinces to come up with a made-in-the-province solution and responds to provincial inaction. Further, Parliament adopted an approach that encourages companies, investors, and consumers to change their behaviour. Parliament designed the *Act* to intrude minimally on facilities' operations. Rather than using its criminal law power to enact specific prohibitions or obligations aimed at reducing GHG emissions, the *Act* implements the "polluter pays" principle, which is "firmly entrenched in environmental law in Canada."[149] Regulations that require specific outcomes or use of particular technologies in specific sectors are less flexible and more intrusive. Parliament's

---

[145] Alberta's Factum at para 136.
[146] D Newman, "Changing Division of Powers Doctrine and the Emergent Principle of Subsidiarity" (2011) 74 Sask L Rev 21 at 28-29, ABBA, Vol 4, Tab 37.
[147] Alberta's Factum at paras 182, 183.
[148] *Crown Zellerbach*, ABBA, Vol 2, Tab 15; *Hydro-Québec*, ABBA, Vol 2, Tab 13; *Oldman River* at 63-64, para 85 (QL), ABBA, Vol 1, Tab 4; *Syncrude Canada Ltd. v Canada (Attorney General)*, 2016 FCA 160, at paras 8-12, 20, 41-45, 77, 93, 101, CBA, Vol 1, Tab 17; *Interprovincial Co-Operatives*, CBA, Vol 1, Tab 7; Peter W Hogg, *Constitutional Law of Canada*, 5th ed (Toronto: Carswell, 2007) (loose-leaf revision 2018-1) at p 30-21, CBA, Vol 3, Tab 64.
[149] *Imperial Oil Ltd v Quebec (Minister of the Environment)*, 2003 SCC 58 at para 23, [2003] 2 SCR 624, CBA, Vol 1, Tab 6.

use of its taxation power would have also been less flexible and more intrusive. Parliament would unquestionably have the constitutional authority to adopt a national carbon tax that applies across Canada, without regard to GHG emissions prices already in place in many provincial jurisdictions, and across all sectors. As set out in the *Regulatory Impact Analysis Statement* for the *Output Based Pricing System Regulations*,[150] this approach would have a far greater economic impact on EITE industries. Recognizing Parliament's power to legislate in this vital area under its POGG power does not shift the balance of legislative power, but rather provides Parliament with increased flexibility, reflecting the scale of the problem.

126. Finally, Alberta submits that there is "no reason why … genuinely cooperative solutions cannot work as a means of adopting a cooperative or integrated approach to addressing GHG emissions".[151] The factual context leading to the enactment of the *Act* shows that the *Pan-Canadian Framework* reflects a cooperative approach to addressing climate change, including using carbon pricing as a mechanism for reducing Canada's GHG emissions. The backstop architecture of the *Act* fosters and accommodates this cooperative approach.

127. Ultimately, cooperative federalism does not necessarily include the right not to cooperate on a matter of national concern. Indeed, in describing the Supreme Court's decision in *Munro*,[152] Professor Hogg notes that a lack of provincial cooperation may support recognizing Parliament's jurisdiction:

> In the case of the national capital region (*Munro*), the failure of either Quebec or Ontario to cooperate in the development of the national capital region would have denied to all Canadians the symbolic value of a suitable national capital. Indeed, in the *Munro* case the Supreme Court of Canada took judicial notice of the fact that the "zoning" of the national capital region was only undertaken federally after unsuccessful efforts by the federal government to secure cooperative action by Ontario and Quebec.[153]

---

[150] CR, Vol 3, Moffet, Ex SS at R946-49.
[151] Alberta's Factum at paras 271-278, quote from para 277.
[152] *Munro*, ABBA Vol 1, Tab 7.
[153] Peter Hogg, *Constitutional Law of Canada*, 5th ed (Toronto: Carswell, 2007) (loose-leaf revision 2018-1) at p 17-14, CBA, Vol 2, Tab 69; *Munro* at 667, pp 3-4 (QL), ABBA Vol 1, Tab 7; ONCA Reasons at para 108, ABBA, Vol 3, Tab 20.

PART IV ORDER SOUGHT

128. Canada seeks the Court's opinion that the entire *Act* is validly enacted under Parliament's power to pass laws for the peace, order, and good government of Canada to address a matter of national concern, namely establishing minimum national standards that are integral to reducing Canada's nationwide GHG emissions.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated this 24th day of October, 2019.

Sharlene Telles-Langdon for **Christine Mohr**

for **Mary Matthews** **Neil Goodridge**

for **Ned Djordjevic** **Beth Tait**
Of Counsel for the Attorney General of Canada

PART V TABLE OF AUTHORITIES

Tab of CBA	Tab of ABBA	Case Law	Cited at Para
	1	*114957 Canada Ltée (Spraytech, Société d'arrosage) v Hudson (Town)*, 2001 SCC 40, [2001] 2 SCR 241	82, 115
1		*Attorney General of Canada v Canadian National Transportation Ltd*, [1983] 2 SCR 206	94, 99
2		*British Columbia v Canadian Forest Products Ltd*, 2004 SCC 38, [2004] 2 SCR 74	82
3		*Canada Metal Co v R* (1982), 144 DLR (3d) 124 (Man QB)	103
	3	*Canadian Western Bank v Alberta*, 2007 SCC 22, [2007] 2 SCR 3	112, 115
	4	*Friends of the Oldman River Society v Canada (Minister of Transport)*, [1992] 1 SCR 3	82, 124
4		*General Motors of Canada Ltd v City National Leasing*, [1989] 1 SCR 641	91, 99
5		*Goodwin v British Columbia (Superintendent of Motor Vehicles)*, 2015 SCC 46, [2015] 3 SCR 250	110
6		*Imperial Oil Ltd v Quebec (Minister of the Environment)*, 2003 SCC 58, [2003] 2 SCR 624	125
7		*Interprovincial Co-Operatives Ltd et al v R*, [1976] 1 SCR 477	103, 124
8		*Labatt Breweries of Canada Ltd v Attorney General of Canada*, [1980] 1 SCR 914	97
9		*Law Society of British Columbia v Mangat*, 2001 SCC 67, [2001] 3 SCR 113	112
10		*Marine Services International Ltd v Ryan Estate*, 2013 SCC 44, [2013] 3 SCR 53	115

Tab of CBA	**Tab of ABBA**	**Case Law**	**Cited at Para**
11		*Multiple Access Ltd v McCutcheon*, [1982] 2 SCR 161	113
	7	*Munro v National Capital Commission*, [1966] SCR 663	80, 99, 127
	9	*Ontario (AG) v Canada (AG)*, [1896] AC 348	62
	8	*Ontario Hydro v Ontario (Labour Relations Board)*, [1993] 3 SCR 327	77, 100, 112, 113, 121
12		*Ontario v Canadian Pacific Ltd*, [1995] 2 SCR 1031	82
13		*Orphan Well Association v Grant Thornton Ltd*, 2019 SCC 5	115
14		*Provincial Court Judges' Assn of New Brunswick v New Brunswick (Minister of Justice); Ontario Judges' Assn v Ontario (Management Board); Bodner v Alberta; Conférence des juges du Québec v Quebec (Attorney General); Minc v Quebec (Attorney General)*, 2005 SCC 44 [2005] 2 SCR 286.	78
	10	*Quebec (AG) v Canada (AG)*, 2015 SCC 14, [2015] 1 SCR 693	66, 115, 122
	14	*R v Comeau*, 2018 SCC 15, [2018] 1 SCR 342	122
	15	*R v Crown Zellerbach Canada Ltd.*, [1988] 1 SCR 401	63, 84, 87, 88, 93, 97, 98, 106, 113, 124
	13	*R v Hydro-Québec*, [1997] 3 SCR 213	64, 90, 124
	17	*Reference re Anti-Inflation Act*, [1976] 2 SCR 373	73
	18	*Reference re Assisted Human Reproduction Act*, 2010 SCC 61, [2010] 3 SCR 457	113

Tab of CBA	Tab of ABBA	Case Law	Cited at Para
	20	*Reference re Greenhouse Gas Pollution Pricing Act*, 2019 ONCA 544	72, 75, 77, 78, 83, 84, 98, 105, 107, 108, 111, 127
	21	*Reference re Greenhouse Gas Pollution Pricing Act*, 2019 SKCA 40	66, 72, 75, 78, 83, 105
	23	*Reference re Pan-Canadian Securities Regulation*, 2018 SCC 48	66, 76, 94, 99, 100, 103, 112
	24	*Reference re Secession of Quebec*, [1998] 2 SCR 217	122
	25	*Reference re Securities Act*, 2011 SCC 66, [2011] 3 SCR 837	65, 66, 68, 71, 76, 99, 100, 111, 112, 122
15		*Reference re: Firearms Act (Can)*, 2000 SCC 31, [2000] 1 SCR 783	66, 68, 78,
	27	*Rogers Communications Inc. v Châteauguay (City)*, 2016 SCC 23, [2016] 1 SCR 467	113, 115
16		*Schneider v The Queen*, [1982] 2 SCR 112	98
17		*Syncrude Canada Ltd v Canada (Attorney General)*, 2016 FCA 160	124
18		Court of Appeal, The Hague, October 9, 2018, *Urgenda Foundation v The State of the Netherlands*, Case Number: 200.178.245/01 (The Netherlands)	87
19		*Ward v Canada (Attorney General)*, 2002 SCC 17, [2002] 1 SCR 569.	64
20		*Westcoast Energy Inc v Canada (National Energy Board)*, [1998] 1 SCR 322	121

Tab of CBA	**Tab of ABBA**	**Statutes and Regulations**		**Cited at Para**
21		*Budget Implementation Act, 2018, No 2,* SC 2018, c 27, s 13	*Loi n° 2 d'exécution du budget de 2018,* LC 2018, ch 27, art 13	48
	5	*Constitution Act, 1867,* (UK) 30 & 31 Victoria, c 3, ss 91 and 92A	*Loi constitutionnelle de 1867,* (R-U), 30 & 31 Vict, c 3, art 91 and 92A	6, 61, 74, 104, 108, 118, 122
	1	*Greenhouse Gas Pollution Pricing Act,* SC 2018, c 12, s 186	*Loi sur la tarification de la pollution causée par les gaz à effet de serre,* LC 2018, ch 12, art 186	2, 3, 5-7, 36, 37, 40-49, 52, 54, 65, 67-74, 91, 102, 105, 108, 109, 117, 125, 126, 128
22		*Order Amending Part 2 of Schedule 1 to the Greenhouse Gas Pollution Pricing Act,* SOR/2018-212	*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	47, 70
23		*Regulations Amending Part 1 of Schedule 1 and Schedule 2 to the Greenhouse Gas Pollution Pricing Act,* SOR/2019-79	*Règlement modifiant la partie 1 de l'annexe 1 et l'annexe 2 de la Loi sur la tarification de la pollution causée par les gaz à effet de serre,* DORS/2019-79	47
24		*Part 1 of the Greenhouse Gas Pollution Pricing Act Regulations (Alberta),* SOR/2019-294.	*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	52

Tab of CBA	**Parliamentary Secondary Sources**	**Cited at Para**
25	*House of Commons Debates*, 32-1, No 4 (23 October 1980)	119
26	*House of Commons Debates*, 42-1, No 86 (3 October 2016)	26, 39
27	*House of Commons Debates*, 42-1, No 146 (23 February 2017)	11, 13, 14
28	*House of Commons Debates*, 42-1, No 279 (16 April 2018)	38
29	*House of Commons Debates*, 42-1, No 283 (23 April 2018)	38
30	*House of Commons Debates*, 42-1, No 289 (1 May 2018)	13, 14, 38, 39, 49
31	*House of Commons Debates*, 42-1, No 294 (8 May 2018)	14, 38, 49
32	*House of Commons Debates*, 42-1, No 304 (30 May 2018)	49
33	*House of Commons Debates*, 42-1, No 305 (31 May 2018)	38
34	House of Commons, *Journals*, 42-1, No 435 (17 June 2019)	12
35	House of Commons, Standing Committee on Finance, *Evidence*, 42-1, No 146 (25 April 2018)	38
36	House of Commons, Standing Committee on Finance, *Evidence*, 42-1, No 148 (1 May 2018)	31, 50
37	House of Commons, Standing Committee on Finance, *Evidence*, 42-1, No 151 (7 May 2018)	49
38	House of Commons, Standing Committee on Finance, *Evidence*, 42-1, No 152 (8 May 2018)	50
39	House of Commons, Standing Committee on Finance, *Evidence*, 42-1, No 157 (23 May 2018)	41, 68
40	House of Commons, Standing Committee on Natural Resources, *Evidence*, 42-1, No 9 (2 May 2016)	39
41	House of Commons, Standing Committee on Natural Resources, *Evidence*, 42-1, No 12 (16 May 2016)	39

Tab of CBA	**Parliamentary Secondary Sources**	**Cited at Para**
42	Senate, Standing Senate Committee on Agriculture and Forestry, 42-1, No 50 (1 May 2018)	38
43	Senate, Standing Senate Committee on Agriculture and Forestry, 42-1, No 52 (22 May 2018)	49
44	Senate, Standing Senate Committee on Energy, the Environment and Natural Resources, *Evidence*, 42-1, No 25 (11-13 April 2016)	39
45	Senate, Standing Senate Committee on Energy, the Environment and Natural Resources, *Evidence*, 42-1, No 44 (1-3 May 2018)	31, 38, 44, 50, 105
46	Senate, Standing Senate Committee on Energy, the Environment and Natural Resources, *Evidence*, 42-1, No 45 (10 May 2018)	49
47	Senate, Standing Senate Committee on Energy, the Environment and Natural Resources, *Evidence*, 42-1, No 46 (22 May 2018)	37, 49
48	Special Joint Committee of the Senate and of the House of Commons on the Constitution of Canada, *Evidence*, 32-1, No 2 (7 November 1980)	119
49	Special Joint Committee of the Senate and of the House of Commons on the Constitution of Canada, *Evidence*, 32-1, No 4 (13 November 1980)	119
50	Special Joint Committee of the Senate and of the House of Commons on the Constitution of Canada, *Evidence*, 32-1, No 37 (14 January 1981)	119
51	Special Joint Committee of the Senate and of the House of Commons on the Constitution of Canada, *Evidence*, 32-1, No 38 (15 January 1981)	119
52	Special Joint Committee of the Senate and of the House of Commons on the Constitution of Canada, *Evidence*, 32-1, No 39 (16 January 1981)	119
53	Special Joint Committee of the Senate and of the House of Commons on the Constitution of Canada, *Evidence*, 32-1, No 49 (30 January 1981)	119

Tab of CBA	**Parliamentary Secondary Sources**	**Cited at Para**
54	Special Joint Committee of the Senate and of the House of Commons on the Constitution of Canada, *Evidence*, 32-1, No 50 (31 January 1981)	119
55	Special Joint Committee of the Senate and of the House of Commons on the Constitution of Canada, *Evidence*, 32-1, No 53 (4 February 1981)	119
56	Special Joint Committee of the Senate and of the House of Commons on the Constitution of Canada, *Evidence*, 32-1, No 54 (5 February 1981)	119, 120
57	Report of the Continuing Committee of Ministers on the Constitution to First Ministers, *Resource Ownership and Interprovincial Trade*, Doc 800-14 (Ottawa: 8-12 September 1980)	119

Tab of CBA	**Tab of ABBA**	**Textbook / Paper Secondary Sources**	**Cited at Para**
58		Nathalie Chalifour, "Canadian Climate Federalism: Parliament's Ample Constitutional Authority to Legislate GHG Emissions" (2016) 36 NJCL 331	89, 103, 112
59		Stewart Elgie, "Kyoto, the Constitution, and carbon trading: waking a sleeping BNA bear (or two)" (2007-08) 13:1 Rev Const Stud 67	112
60		Morris J Fish, "The Effect of Alcohol on the Canadian Constitution … Seriously" (2011) 57 McGill LJ 189	112
61		James R Fleming, *Historical Perspectives on Climate Change* (Oxford: Oxford University Press, 1998)	83
62		Dale Gibson, "Measuring National Dimensions", (1976) 7 Man LJ 15	96
	32	K. Lysyk, "Constitutional Reform and the Introductory Clause of Section 91: Residual and Emergency Law-Making Authority" (1979) 57 Can Bar Rev 531	64

Tab of CBA	**Tab of ABBA**	**Textbook / Paper Secondary Sources**	**Cited at Para**
63		Peter W Hogg, "Constitutional Authority over Greenhouse Gas Emissions", (2009) 46:2 Alta L Rev 507	112
64		Peter W Hogg, *Constitutional Law of Canada*, 5th ed (Toronto: Carswell, 2007) (loose-leaf revision 2018-1)	61, 80, 84, 124, 127
	37	D Newman, "Changing Division of Powers Doctrine and the Emergent Principle of Subsidiarity" (2011) 74 Sask L Rev 21	123
65		Spencer R Weart, *The Discovery of Global Warming* (Cambridge, MA: Harvard University Press, 2008)	83