

COURT OF APPEAL FOR ONTARIO

IN THE MATTER OF A REFERENCE to the Court of Appeal pursuant to section 8 of the *Courts of Justice Act*, RSO 1990, c. C. 34, by the Order-in-Council 1014/2018 respecting the constitutionality of the *Greenhouse Gas Pollution Pricing Act*, Part 5 of the *Budget Implementation Act, No. 1*, SC 2018 c. 12

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PART I – OVERVIEW

1. Greenhouse gas (“GHG”) emissions are an urgent threat to youth and future generations. Their effects on the climate are becoming more complex and severe as they accumulate in the atmosphere. We are approaching potentially irreversible tipping points, beyond which climate change will become even less predictable and less manageable. Youth and future generations will bear all the consequences of our decisions on GHGs, but they have no right to participate in those decisions. They rely entirely on us to protect their interests and their environment.

2. Fortunately, the Canadian Constitution is much more than the division of powers. It is founded on basic principles that serve as essential interpretive tools and help the Constitution adapt to new realities, like climate change. The constitutional principle of protection of minorities reminds us to consider the consequences our actions may have for vulnerable groups, which in this case include youth and future generations.

3. Canada has demonstrated a commitment to protect youth and future generations since Confederation, in the *Charter*, and now in the *Greenhouse Gas Pollution Pricing Act* (the “Act”). This principle, and the inter-generational perspective it requires in this case, tempers the application of other constitutional principles. It also informs interpretations of Parliament’s authority that confirm the Act is *intra vires*.

PART II – SUMMARY OF FACTS

A. Climate Change is an Urgent Threat to Youth and Future Generations

4. Human activities, including accumulated GHG emissions, have already caused global warming of 1° C. Across Canada, people are dying, ecosystems are deteriorating,

and property is being destroyed, as a result of droughts, wildfires, and deadly heatwaves.

Affidavit of Paul Kershaw, affirmed December 18, 2018, para. 11
Coalition Record [CR], Tab 1; Ex T, pp 245, 252 [Kershaw]

5. Climate change and its impacts will only get worse as more GHGs are released into the atmosphere. Global warming is likely to reach 1.5° C as early as 2030 and will cause increasing harm, including extreme weather events, rising sea levels and droughts, as well as higher rates of heat-related deaths and cardiovascular, respiratory and infectious diseases.

Kershaw, paras. 11-13, CR Tab 1; Ex D, p. 45; Ex E, pp. 107-111

6. The full consequences of our actions, or inaction, on GHGs today will only be felt decades and even centuries from now. If the climate warms by 2° C or more, we risk a “cascade of feedbacks” with more severe and less predictable effects.

Kershaw, para 13 CR Tab 1; Ex F, pp 114-118

7. For Canadian children, climate change is already an emergency. Due to decisions made before they were born or able to vote, they will live their entire lives under the mounting environmental, economic, and health stresses caused by GHG emissions.

Kershaw, paras 9-14, 33, 34, CR Tab 1; Ex S, pp 238-244

8. Children are also exceptionally vulnerable to the harms of climate change, from extreme heat to vector-borne diseases (e.g. Zika, Lyme). They are also more susceptible to respiratory problems related to climate change, such as allergies and asthma. These ailments can cause lifelong health problems for afflicted children.

Kershaw, paras 30, 31, CR Tab 1; Ex P, pp 206-208; Ex R, p 234

9. Our children and future generations of Canadians also will suffer the massive financial costs of mitigating and adapting to increasingly severe climate change, as well

as the lost economic opportunities as ecosystems become less reliable.

Kershaw, paras 9-11, CR Tab 1; Ex D, p 77; Ex S, pp 254-256

10. Serious measures are required now to combat this threat to the well-being and prosperity of Canadian children and future generations. A price on GHGs is widely recognized as a critical part of any comprehensive climate change strategy.

Kershaw, paras 16-19, 21 CR Tab 1; Ex D, p 89; Ex G, pp 136-138

PART III – STATEMENT OF POSITION AND ARGUMENT

11. The entire Act is constitutional. Parliament has authority to regulate GHG emissions, including by establishing a national backstop price for them.

12. The broad reference question and the Parties’ arguments put the nature and principles of the Constitution in dispute. Ontario argues the Act undermines the constitutional principles of federalism and “no taxation without representation.” However, those principles cannot be invoked selectively to defeat the equally fundamental constitutional commitment to protect minorities.

Factum of the Attorney General of Ontario (“AGO”), paras 82-92, 106

13. The constitutional principle of protection of minorities applies to youth and future generations, especially in the environmental context. Given the disproportionate harms they will suffer from climate change, the principle of protection of minorities informs the application of other constitutional principles in this case and supports federal jurisdiction over GHG emissions under various heads of power.

A. The Constitutional Commitment to Protect Youth and Future Generations

14. The Canadian Constitution, including the division of powers in ss. 91 and 92 of the *Constitution Act, 1867*, is not a straightjacket. As the Supreme Court of Canada

noted in *Re Same Sex Marriage*:

A large and liberal, or progressive, interpretation ensures the continued relevance and, indeed, legitimacy of Canada's constituting document. By way of progressive interpretation our Constitution succeeds in its ambitious enterprise, that of structuring the exercise of power by the organs of the state in times vastly different from those in which it was crafted.

Re Same-Sex Marriage, 2004 SCC 79, [2004] 3 SCR 698, para 23,
Coalition Book of Authorities [CBA] Tab 6

15. The very act of making a constitution presumes future generations: they must exist to inherit and, in turn, maintain a way of life anchored by the values and principles adopted by their predecessors. Indeed, the Constitution is “drafted with an eye to the future ... capable of growth and development over time to meet new social, political, and historical realities often unimagined by its framers.”

Hunter et al. v Southam Inc., [1984] 2 S.C.R. 145, p. 155, CBA Tab 3

16. The Constitution must evolve to remain relevant and legitimate across generations. One way it evolves is the identification, elaboration, and application of constitutional principles, which “inform and sustain the constitutional text.”

Re Secession of Quebec, [1998] 2 SCR 217, para 49
Joint Book of Authorities [JBA] Vol 4, Tab 49

17. According to the Supreme Court of Canada in *Re Secession of Quebec*:

The principles assist in the interpretation of the text and the delineation of spheres of jurisdiction, the scope of rights and obligations, and the role of our political institutions. Equally important, observance of and respect for these principles is essential to the ongoing process of constitutional development and evolution of our Constitution as a "living tree"...

Re Secession of Quebec, supra, para 52, JBA Vol 4, Tab 49

18. The SCC has identified a constellation of such principles, including democracy, federalism, the honour of the Crown, and the protection of minorities: “These defining

principles function in symbiosis. No single principle can be defined in isolation from the others, nor does any one principle trump or exclude the operation of any other.”

Re Secession of Quebec, supra, para 49, JBA Vol 4, Tab 49

19. As discussed below, in light of constitutional text, history, case law, international commitments, and the fundamental values of Canadian society, the principle of “protection of minorities” encompasses children and future generations. This principle is an essential resource that must inform the interpretation of the Constitution in this case.

Re Senate Reform, 2014 SCC 23, para 25, CBA Tab 7

20. The principle of “protection of minorities” tempers the application of other constitutional principles. Just as federalism reminds us of the need for balance between jurisdictions, the protection of minorities reminds us to consider the consequences interpretations may have for vulnerable groups, which in this case include children and future generations. Similarly, the principle of “no taxation without representation” must be considered alongside the commitment to protect the generations that will suffer the effects of our decisions without having the right to participate in them.

R. v Comeau, 2018 SCC 15, para 82, JBA Vol 3, Tab 39

1. Text and History

21. Constitutional principles are revealed, in part, by constitutional text and practice:

Behind the written word is an historical lineage stretching back through the ages, which aids in the consideration of the underlying constitutional principles. These principles inform and sustain the constitutional text: they are the vital unstated assumptions upon which the text is based.

Re Secession of Quebec, para 49, JBA Vol 4, Tab 49

22. The principle of “protection of minorities” was enshrined in the compromise of the *Constitution Act, 1867* to protect linguistic and religious minorities in what were then

Canada East and Canada West. It has since evolved into a general and independent constitutional principle, which is expressed throughout the *Charter of Rights and Freedoms*, including in sections 15 (equality) and 16-23 (language rights), and elsewhere in the *Constitution Act, 1982*, such as section 35 (aboriginal and treaty rights).

Re Secession of Quebec, para 79, JBA Vol 4, Tab 49

23. This principle recognizes the role for courts in protecting “discrete and insular minorities” that cannot rely on majoritarian politics to respect their rights and interests.

United States v Carolene Products Co., (1938) 304 US 144, footnote 4, CBA Tab 8; *R v Turpin*, [1989] 1 SCR 1296, p 1332, CBA Tab 5; *Law v Canada*, [1999] 1 SCR 497, para 95, CBA Tab 4

24. Youth and future generations are one such “discrete and insular” minority. They are subject to strict legal disabilities that deny them the right to participate in ordinary democratic politics. Young people under the age of 18 cannot vote in federal or provincial elections. Future generations have no votes today. They have no say in the decisions that determine our GHG emissions, but they will be forced to bear the heaviest environmental, economic, and health burdens from those emissions.

Kershaw, paras 7, 10, 11, 31, CR Tab 1; Ex A; Ex C, p 36; Ex Q

25. Canadian constitutional history demonstrates a deep concern for children and future generations. During the debates on Confederation, the proposed federal union was described as serving the future prosperity and well-being of subjects, their children, and the entire country. For example:

- a) Attorney General John A. Macdonald, quoting the 1864 Quebec Resolution, described the “scheme” of Confederation as “for the best interests, and present and future prosperity of British North America”; and

- b) He also challenged members of the assembly to “Reject it, if you do not believe it to be for the present advantage and future prosperity of yourselves and your children”.

Canada, Parliamentary Debates on the Subject of the Confederation of the British North American Provinces, 8th Prov Parl of Canada, 3rd Sess (Quebec: Hunter, Rose & Co, 1865), pp 31-32, CBA Tab 11

26. It would be perverse for the division of powers to be used 150 years later to defeat that deep concern for future generations by frustrating efforts to combat climate change.

27. Section 15 of the *Charter* confirms this concern by prohibiting discrimination on the basis of age. As the SCC has noted, children are vulnerable members of Canadian society with a critical need for a safe environment. Children are politically disadvantaged (no vote), stereotyped (treated as an incapable class of “minors”, rather than as individuals with different capabilities), and prejudiced by current approaches to climate change. They will bear the full future consequences of our past and present GHG emissions, and those harms will be disproportionate to their contribution to the problem.

Canadian Foundation for Children, Youth and the Law v Canada (Attorney General), 2004 SCC 4, para. 58 [*CFCYL*], CBA Tab 2

2. International Commitments

28. The UN Convention on the Rights of the Child (the “Convention”) and the UN Framework Convention on Climate Change (“UNFCCC”) reinforce the notion that children and future generations are among the minorities protected by this constitutional principle, particularly in the context of climate change. These conventions recognize the unique vulnerability, needs, and importance of children and future generations.

29. International law, including Canada’s international legal commitments, informs the interpretation of constitutional principles, both directly and by illuminating the

written constitutional provisions that express those principles. According to Chief Justice McLachlin (as she then was):

As courts continue to struggle to understand the precise legal effect of a country's international commitments, it surely must be the case that these can inform our understanding of the basic values that the state publicly and formally embraces. Where a country adheres to international covenants, such as the United Nations Convention Against Torture or the International Covenant on Civil and Political Rights, it thereby signals its intentions to be bound by their principles. This may amplify indications from usage and convention and the written text of the constitution and help to establish the boundaries of certain unwritten principles.

Beverly McLachlin, "Unwritten Constitutional Principles: What is Going On?", (2006) 4 NZJPIL 147, p 158, CBA Tab 9

30. Canada has demonstrated its commitment to protect children by ratifying the Convention. That Convention informs the degree of protection children receive under s. 7 of the *Charter*. Article 24 of the Convention enshrines the right of the child to the highest standard of health. The UN committee established to monitor the implementation of the Convention has found that climate change is one of the biggest threats to children's health and that "States should, therefore, put children's health concerns at the centre of their climate change adaptation and mitigation strategies."

CFCYL, para 186 (Arbour J, dissenting), CBA Tab 2; *Convention on the Rights of the Child*, 20 November 1989, 1577 UNTS 3, Can TS 1992 No 3, Art 24, CBA Tab 12 and Schedule B Tab 1; Kershaw, Ex O, p 203

31. The UNFCCC is the foundation and framework for the Paris Agreement. In its Preamble, the Parties declare they are "Determined to protect the climate system for present and future generations." They later adopt, as a guiding principle, that "the Parties should protect the climate system for the benefit of present and future generations of mankind..." The UNFCCC confirms both Canada's commitment to protect future generations and the inter-generational nature of the threat posed by GHG emissions.

Framework Convention on Climate Change, 21 March 1994, 1771 UNTS 107, Preamble and Art 3.1, CBA Tab 13 and Schedule B Tab 2

3. Fundamental Values

32. The SCC has recognized that the protection of children and the protection of the environment are both basic values of Canadian society. In *Baker v. Canada*, L’Heureux-Dubé J. wrote for the majority that “Children’s rights, and attention to their interests, are central humanitarian and compassionate values in Canadian society.”

Baker v. Canada (Minister of Citizenship and Immigration),
[1999] 2 SCR 817, paras 67 and 71, CBA Tab 1

33. In *Spraytech*, L’Heureux-Dubé J. again wrote for the majority that:

our common future, that of every Canadian community, depends on a healthy environment... “[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.”

114957 Canada Ltée (Spraytech, Société d’arrosage) v Hudson (Town),
[2001] 2 SCR 241, para 1, citing *Ontario v Canadian Pacific Ltd*,
[1995] 2 SCR 1031, para 55, JBA Vol 1, Tab 2

34. Together, these two basic values express our commitment to pass a healthy, prosperous and democratic way of life on to future generations. They are reflected in the SCC’s observation that legislative efforts to safeguard the environment can be understood as “evidence of an emerging sense of inter-generational solidarity and acknowledgement of an environmental debt to humanity and to the world of tomorrow.”

Imperial Oil Ltd v Quebec (Minister of the Environment), [2003] 2 SCR 624, para 19, JBA Vol 2, Tab 25

4. The Protection of Minorities Informs the Application of Other Principles

35. The commitment to protect minorities tempers the application of other constitutional principles. As the SCC has noted, these principles “function in symbiosis”

and “[t]he individual elements of the Constitution are linked to the others, and must be interpreted by reference to the structure of the Constitution as a whole.”

Re Secession of Quebec, paras 49-50, JBA Vol 4, Tab 49

36. The constitutional principles engaged by this reference are parts of a coherent conceptual and institutional whole. They inform and constrain one another and, by doing so, support the entire constitutional enterprise. In light of the principle of “protection of minorities,” federalism cannot be understood simply as concerned with a “balance” between provincial and federal governments. Rather, as noted above, one of the central purposes of the federal union was to promote the future prosperity and well-being of Canadians. Any “balance” between the levels of government should serve this goal.

37. This “progressive approach” to interpretation also applies to the division of powers set out in ss. 91 and 92 of the *Constitution Act, 1867*. Just as “the three other constitutional principles inform the scope and operation of the specific provisions that protect the rights of minorities,” the principle of protection of minorities also informs those provisions that implement federalism.

Re Same Sex Marriage, para 22, CBA Tab 6;
Re Secession of Quebec, para 80, JBA Vol 4, Tab 49

38. In light of this constitutional principle, the balance between jurisdictions cannot be the only concern, even in a case that involves the division of powers. In this case, due to the inter-generational nature of the threat from GHG emissions, the court also needs to consider how proposed interpretations would impact youth and future generations.

B. Parliament Has Authority to Regulate GHG Emissions

39. Every jurisdiction in Canada continues to emit GHGs, but Parliament is the only one capable of acting on a scale proportionate to the problem we have created for our

children and future generations. It must be able to protect that vulnerable group against provinces and generations that fail to do their part to reduce GHGs.

40. The principle of “protection of minorities” supports an interpretation of federal authority on GHGs that responds to the inter-generational nature of this threat. It supports federal power to set a backstop national GHG price, whether under the POGG clause or the Trade and Commerce (s. 91(2)) or Criminal Law (s. 91(27)) powers.

Kershaw, para 19, CR Tab 1; Ex I, p 157

1. Characterization of the Act

41. The first step in analyzing whether the Act is *intra vires* Parliament is to characterize it. Ontario has described the Act as “an attempt to create a comprehensive regulatory scheme for the reduction of greenhouse gas emissions from all sources in Canada.” This selective characterization is too narrow. It does not capture a critical purpose of the Act, which is to protect the environment for future generations.

Factum of the AGO, para 53

42. The Act is clearly a legislative effort to safeguard the environment of the sort identified by the SCC in *Imperial Oil*. As demonstrated by its Preamble, the Act is both:

- a) an expression of inter-generational solidarity (“Whereas Parliament recognizes that it is the responsibility of the present generation to minimize impacts of climate change on future generations”); and
- b) an acknowledgment of the environmental debt of current generations (“Whereas recent anthropogenic emissions of greenhouse gases are at the highest level in history and present an unprecedented risk to the environment, including its biological diversity, to human health and safety and to economic prosperity”).

Greenhouse Gas Pollution Pricing Act, SC 2018, c 12, s 186, Preamble,
Schedule B, Tab 3

43. In light of the Preamble and similar statements made during debate in Parliament, Parliament's intention of protecting the environment for future generations cannot be ignored. That inter-generational perspective is critical to understanding the Act.

Canada, House of Commons, *Official Report of Debates (Hansard)*, 42nd
Parl, 1st Sess, No 282 (19 April 2018) at p 1050 (Mr Peter
Schiefke), CBA Tab 16; Canada, House of Commons, *Official
Report of Debates (Hansard)*, 42nd Parl, 1st Sess, No 283 (23
April 2018) at p 1220 (Hon Bill Morneau), JBA Vol 4, Tab 62

2. Classification of the Act

44. The principle of protection of minorities informs various heads of federal power, each of which supports Parliament's authority to regulate GHGs through the Act.

(a) *Peace, Order, and Good Government – National Concern*

45. The test for federal authority under the national concern branch of POGG requires that the matter be single, distinctive, and indivisible and that the scale of impact on provincial jurisdiction be reconcilable with fundamental distribution of powers.

R v Crown Zellerbach, [1988] 1 SCR 401 (SCC), pp 431-432,
JBA Vol 3, Tab 40

46. For children and future generations, GHGs are a singular and manifest threat to their health and well-being. Based on current trends, we are approaching critical tipping points beyond which climate change will become much more difficult to manage, mitigate, and survive. Regardless of where or how they are emitted, GHGs have the same destabilizing effects on the natural systems that compose our climate and environment.

Kershaw, para 13, CR Tab 1; Ex F, pp 114-118

47. In *Crown Zellerbach*, Le Dain J. looked to international conventions when determining that marine pollution is a single, distinctive, and indivisible matter over

which Parliament has jurisdiction. In this case, the UNFCCC confirms the international character and implications of GHG emissions and treats them separately from other forms of air pollution, just as the *Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter* addressed marine pollution. As noted above, the UNFCCC also recognizes that GHG emissions are inherently inter-generational.

Crown Zellerbach, pp 436-438, JBA Vol 3, Tab 40

48. With respect to the impact on provincial jurisdiction, the principle of protection of minorities supports use of the double aspect doctrine on GHG emissions. The courts should favour interpretations that enable us to fulfill our responsibilities to future generations, including protecting their health and environment. Coordinated provincial action on GHG emissions is not forthcoming and, as the Government of Ontario has shown, can be abandoned. The court can recognize this critical national concern without precluding other provincial responses to this threat: a federal backstop GHG price is compatible with provincial climate actions under their power to regulate local matters.

Canada Western Bank v Alberta, [2007] 2 SCR 3, 2007 SCC 22, paras. 30-31, JBA Vol 1, Tab 15; *Rogers Communications Inc v Châteauguay (City)*, 2016 SCC 23, [2016] 1 SCR 467, paras. 37-38, JBA Vol 4, Tab 52

(b) *Peace, Order, and Good Government – National Emergency*

49. The test for federal authority under the national emergency branch of POGG requires an urgent situation that adversely affects all Canadians, is of such proportions as to transcend provincial authority, and can only be dealt with effectively by Parliament.

Re Anti-Inflation Act, [1976] 2 SCR 373 (SCC), pp 436-437 (Ritchie J),
JBA Vol 3, Tab 44

50. GHG emissions are an existential threat to all Canadian children and future generations right now. Since their impacts are cumulative and existing infrastructure

favours continued emissions, we must act today to avoid bequeathing an increasingly volatile and inhospitable environment. To date, the provinces have been incapable of collectively dealing with this threat and Canada is not on track to meet its international commitments. Parliament must have authority to regulate GHG emissions.

Kershaw, para 20 CR Tab 1; Ex J, p. 181

(c) *Trade and Commerce (s. 91(2))*

51. The protection of minorities also informs the last two parts of the test under the trade and commerce clause: whether the law is of such a nature that the provinces, alone or in concert, would be constitutionally incapable of enacting it; and whether failure to include one or more provinces would jeopardize its success elsewhere in the country.

Re Pan-Canadian Securities Act, 2018 SCC 48, paras 102-103,
JBA Vol 4, Tab 48

52. The SCC has recognized that, when the provinces may suffer from collective action problems and fail to act in concert, the federal government can act to address this gap. The provinces cannot establish a national GHG price to safeguard the environment for future generations. Even if they did agree on a legislative scheme, the failure of a single province or territory to participate could defeat the scheme's purpose, since companies could relocate their GHG-emitting activities to those provinces where GHG pollution is free. The harms from that "carbon leakage" would transcend provincial boundaries and affect the entire country, with severe impacts on future generations.

Re Securities Act, 2011 SCC 66, para 83, JBA Vol 4, Tab 50; *Re Pan-Canadian Securities Act*, para 113, JBA Vol 4, Tab 48

53. The SCC also has confirmed that Parliament can act under this power to manage "systemic risk" to the national economy. GHG emissions present a systemic risk to the environment and the economy. They are destabilizing the climate in unpredictable ways

that affect all sectors of the Canadian economy. The Act aims to reduce that risk by increasing the cost of emissions, not by regulating every aspect of related activities. It complements provincial laws on local matters by addressing a fundamental national environmental (and economic) objective. It aims to close an otherwise unacceptable constitutional gap that would leave our children and future generations exposed to increasingly severe environmental, economic, and health risks from our GHG emissions.

Re Securities Act, 2011 SCC 66, paras 103-104, JBA Vol 4, Tab 50; *Re Pan-Canadian Securities Act*, paras 106-107, 111, JBA Vol 4, Tab 48

(d) Criminal Law (s. 91(27))


54. The test for federal authority under the criminal law power requires a “legitimate public purpose” associated with an “evil” Parliament intends to suppress. Protecting children and future generations from climate change is such a legitimate public purpose, as it is consistent with our fundamental values and our constitutional principles.


R v Hydro Quebec, [1997] 3 SCR 213, paras 123-128, JBA Vol 3, Tab 41

PART IV – STATEMENT OF ORDER SOUGHT

55. The Intergenerational Climate Coalition seeks the Court’s opinion that the entire Act is constitutional and *intra vires* Parliament.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this February 25, 2019.

for 
Nathan Hume


Emma K. Hume

SCHEDULE A– AUTHORITIES

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<i>Re Senate Reform</i> , 2014 SCC 32	19
<i>United States v Carolene Products Co.</i> , (1938) 304 US 144 (USSC)	23
SECONDARY AUTHORITIES	
Beverly McLachlin, “Unwritten Constitutional Principles: What is Going On?”, (2006) 4 NZJPIL 147, p 158.	29
Canada, House of Commons, <i>Official Report of Debates (Hansard)</i> , 42nd Parl, 1st Sess, No 282 (19 April 2018) at p 1050 (Mr Peter Schiefke)	43
Canada, <i>Parliamentary Debates on the Subject of the Confederation of the British North American Provinces</i> , 8th Prov Parl of Canada, 3rd Sess (Quebec: Hunter, Rose & Co, 1865) at pp 31-32 (AG MacDonald)	25
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SCHEDULE B – STATUTES

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اتفاقية حقوق الطفل

《儿童权利公约》

CONVENTION ON THE RIGHTS OF THE CHILD

CONVENTION RELATIVE AUX DROITS DE L' ENFANT

КОНВЕНЦИЯ О ПРАВАХ РЕБЕНКА

CONVENCION SOBRE LOS DERECHOS DEL NIÑO



Convention on the Rights of the Child

PREAMBLE

The States Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in

particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth",

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules); and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict,

Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child,

Recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:

PART I

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(a) To diminish infant and child mortality;

(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;

(c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;

(d) To ensure appropriate pre-natal and post-natal health care for mothers;

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breast-feeding, hygiene and environmental sanitation and the prevention of accidents;

(f) To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Article 25

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review

UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE

The Parties to this Convention,

Acknowledging that change in the **Earth's** climate and its **adverse** effects are a common concern of **humankind,**

Concerned that human activities have been substantially increasing the atmospheric concentrations of greenhouse **gases,** that these increases enhance the natural greenhouse **effect,** and that this will result on **average** in an **additional** warming of the **Earth's** surface and atmosphere and may adversely affect natural ecosystems **and humankind,** .

Noting that the largest share of historical and current global emissions of greenhouse gases has originated in developed **countries,** that per capita emissions in developing countries are still relatively low and that the share of global emissions originating in developing countries will grow to meet their social and development needs,

Aware of the role **and** importance in terrestrial and marine ecosystems of **sinks** and reservoirs of greenhouse gases,

Noting that there are many uncertainties in predictions of climate change, particularly with regard to the timing, magnitude and regional patterns thereof,

Acknowledging that the global nature of climate change calls for the widest possible cooperation by all countries and their participation in an effective and appropriate international response, in accordance with their common but differentiated responsibilities **and** respective capabilities and their social and economic conditions,

Recalling the pertinent provisions of the Declaration of the **United Nations** conference on the Human **Environment, adopted** at Stockholm on 16 June 1972,

Recalling also that States **have,** in accordance with the charter of the **United Nations** and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental **and** developmental policies, **and** the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction,

Reaffirming the principle of sovereignty of States in international cooperation to address climate change,

Recognizing that States **should** enact effective environmental **legislation**, that environmental **standards**, management objectives and priorities **should** reflect the environmental and developmental context to which they **apply**, and that standards applied by some countries may be inappropriate and of unwarranted economic and **social** cost to other **countries**, in particular developing **countries**,

Recalling the provisions of General Assembly resolution 44/228 of 22 December 1989 on the United Nations Conference on Environment and **Development**, and resolutions 43/53 of 6 December 1988, 44/207 of 22 December **1989**, 45/212 of 21 December 1990 and 46/169 of 19 December 1991 on protection of global climate for **present** and future generations of **mankind**,

Recalling also the provisions of General Assembly resolution **44/206** of 22 December 1989 on the possible **adverse** effects of sealevel rise on islands and coastal areas, particularly low-lying coastal **areas** and the pertinent provisions of General Assembly resolution 44/172 of 19 December 1989 on the implementation of the Plan of Action to Combat **Desertification**,

Recalling further the Vienna Convention for the Protection of the Ozone **Layer**, 1985, and the Montreal Protocol on Substances that Deplete the Ozone Layer, 1987, as **adjusted** and **amended** on 29 June **1990**,

Noting the Ministerial Declaration **of** the Second World Climate Conference adopted on 7 November 1990,

Conscious of the valuable analytical work being conducted by **many States** on climate change and of the important contributions of the World Meteorological Organization, the United Nations Environment Programme and other organs, organizations and **bodies** of the United Nations system, as well as other international and intergovernmental bodies, to the exchange of results of scientific research and the coordination of research,

Recognizing that steps required to **understand** and **address** climate change will be environmentally, socially and economically most effective if they are based on relevant **scientific**, technical and economic **considerations** and continually **re-evaluated** in the light of new findings in **these** areas,

Recognizing that various actions to address climate change can be justified economically in their own right and can also help in solving other environmental **problems**,

Recognizing also the need for developed countries to take immediate action in a flexible manner on the basis of clear priorities, as a first step **towards** comprehensive response strategies at the global, national

and, where **agreed**, regional levels that take into account all greenhouse **gases**, with **due** consideration of their relative contributions to the enhancement of the greenhouse effect,

Recognizing further that low-lying and other small island countries, countries with **low-lying coastal, arid and semi-arid** areas or areas liable to floods, drought and **desertification, and developing** countries with fragile mountainous ecosystems are particularly vulnerable to the adverse effects of climate change,

Recognizing the special difficulties of those countries, especially developing countries, whose economies are particularly **dependent** on **fossil** fuel production, use **and** exportation, as a consequence of action taken on limiting greenhouse gas emissions,

Affirming that responses to climate change should be **coordinated** with social and economic development in an integrated manner with a view to **avoiding adverse** impacts on the latter, taking into full account the legitimate priority needs of developing countries for the achievement of sustained economic growth and the **eradication** of poverty,

Recognizing that all countries, especially developing countries, need access to resources **required** to achieve sustainable social and economic development and that, in **order** for developing countries to progress towards that goal, their energy consumption will need to grow taking into account the possibilities **for** achieving greater energy efficiency and for controlling greenhouse gas emissions in general, including through the application of new technologies on terms which make such an application economically and socially beneficial,

Determined to protect the climate system for present and future generations,

Have agreed as follows:

ARTICLE 1

DEFINITIONS*

For the purposes of this **Convention:**

1. "Adverse effects of climate change" means changes in the physical environment or biota resulting from climate change which have significant deleterious effects on the composition, resilience or productivity of

* Titles of articles are included solely to assist the **reader**.

natural and managed **ecosystems** or on the operation of **socio-economic systems** or on human health and welfare.

2. "Climate **change**" means a change of climate **which** is attributed directly or indirectly to human activity that alters the composition of the global atmosphere **and** which is in **addition** to natural climate variability observed over comparable time **periods**.
3. "Climate system" means the totality of the atmosphere, **hydrosphere, biosphere and geosphere** and their **interactions**.
4. "**Emissions**" means the release of greenhouse gases **and/or their** precursors into the atmosphere over a specified area and period of time.
5. "Greenhouse gases" means those gaseous constituents of the **atmosphere**, both natural and anthropogenic, that absorb and **re-emit** infrared **radiation**.
6. "**Regional** economic integration organization" means an organization **constituted** by sovereign States of a given region which has competence in respect of matters governed **by** this **Convention** or its protocols and has been **duly** authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to the instruments **concerned**.
7. "**Reservoir**" means a component or components of the **climate** system where a greenhouse gas or a precursor of a greenhouse gas is stored.
8. "Sink" means any **process**, activity or mechanism which removes a greenhouse gas, an aerosol or a precursor of a **greenhouse** gas from the **atmosphere**.
9. "Source" means any process or activity which releases a greenhouse **gas**, an aerosol or a precursor of a greenhouse gas into the atmosphere.

ARTICLE 2

OBJECTIVE

The ultimate objective of this Convention **and** any related legal instruments that the **Conference** of the Parties **may** adopt is to achieve, in accordance with the relevant provisions of the Convention, **stabilization** of greenhouse gas concentrations in the atmosphere at a level that **would** prevent **dangerous** anthropogenic interference with the climate system. Such a level should be achieved within a **time-frame** sufficient to **allow** ecosystems to adapt naturally to climate change, to **ensure** that food production is not threatened and to enable economic **development** to proceed in a sustainable manner.

ARTICLE 3

PRINCIPLES

In their actions to achieve the objective of the Convention **and to implement its provisions**, the Parties shall be **guided, inter alia**, by the following:

1. The Parties **should** protect the climate system for the benefit of present **and** future generations of **humankind**, on the basis of equity and in **accordance** with their common but differentiated responsibilities **and** respective **capabilities**. **Accordingly**, the developed country **Parties** should take the lead in combating climate change and the adverse effects thereof.
2. The specific needs **and** special circumstances of developing country **Parties, especially** those that are particularly vulnerable to the **adverse effects** of climate change, **and** of those Parties, especially **developing** country Parties, that would have to bear a disproportionate or abnormal burden under the Convention, **should** be given full **consideration**.
3. The Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its **adverse** effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty **should** not be used as a reason for postponing such measures, taking into account that **policies and measures** to deal with climate change should be cost-effective so as to ensure global benefits at the lowest possible cost. *. To achieve this, such **policies and measures should** take into account different **socio-economic** contexts, be comprehensive, cover all relevant sources, sinks and reservoirs of greenhouse gases **and** adaptation, and comprise all economic sectors. Efforts to **address** climate change may be carried out cooperatively by interested Parties.
4. The Parties have a right to, **and** should, promote sustainable development. Policies **and** measures to protect the **climate** system against **human-induced** change **should** be appropriate for the specific **conditions** of each **party and should** be **integrated** with national development **programmes**, taking into account that economic development is essential for adopting measures to **address** climate change.
5. The Parties should cooperate to promote a supportive and open international economic system that would lead to sustainable economic growth and development in all Parties, particularly developing country Parties, thus enabling them better to address the problems of climate change. Measures taken to combat climate change, including unilateral ones, should not constitute a means of arbitrary or unjustifiable **discrimination** or a **disguised** restriction on international trade.



CANADA

CONSOLIDATION

CODIFICATION

Greenhouse Gas Pollution Pricing Act

Loi sur la tarification de la pollution causée par les gaz à effet de serre

S.C. 2018, c. 12, s. 186

L.C. 2018, ch. 12, art. 186

NOTE

[Enacted by section 186 of chapter 12 of the
Statutes of Canada, 2018, in force on assent June
21, 2018.]

NOTE

[Édictée par l'article 186 du chapitre 12 des Lois du
Canada (2018), en vigueur à la sanction le 21 juin
2018.]

Current to February 14, 2019

À jour au 14 février 2019

Last amended on October 19, 2018

Dernière modification le 19 octobre 2018



S.C. 2018, c. 12, s. 186

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

[Assented to 21st June 2018]

Preamble

Whereas there is broad scientific consensus that anthropogenic greenhouse gas emissions contribute to global climate change;

Whereas recent anthropogenic emissions of greenhouse gases are at the highest level in history and present an unprecedented risk to the environment, including its biological diversity, to human health and safety and to economic prosperity;

Whereas impacts of climate change, such as coastal erosion, thawing permafrost, increases in heat waves, droughts and flooding, and related risks to critical infrastructures and food security are already being felt throughout Canada and are impacting Canadians, in particular the Indigenous peoples of Canada, low-income citizens and northern, coastal and remote communities;

Whereas Parliament recognizes that it is the responsibility of the present generation to minimize impacts of climate change on future generations;

Whereas the United Nations, Parliament and the scientific community have identified climate change as an international concern which cannot be contained within geographic boundaries;

Whereas Canada has ratified the United Nations Framework Convention on Climate Change, done in New York on May 9, 1992, which entered into force in 1994, and the objective of that Convention is the stabilization of greenhouse gas concentrations in the

L.C. 2018, ch. 12, art. 186

Loi visant à atténuer les changements climatiques par l'application pancanadienne de mécanismes de tarification à un large éventail de sources d'émissions de gaz à effet de serre et apportant des modifications corrélatives à d'autres lois

[Sanctionnée le 21 juin 2018]

Préambule

Attendu :

qu'il existe un large consensus scientifique selon lequel les émissions anthropiques de gaz à effet de serre contribuent aux changements climatiques mondiaux;

que les émissions anthropiques de gaz à effet de serre des dernières années sont les plus élevées observées dans l'histoire et qu'elles présentent un risque sans précédent pour l'environnement y compris sa diversité biologique, pour la santé et la sécurité humaines et pour la prospérité économique;

que les répercussions des changements climatiques comme l'érosion côtière, le dégel du pergélisol et l'augmentation des canicules, des sécheresses et des inondations ainsi que les risques inhérents pour les infrastructures essentielles et la sécurité alimentaire se font déjà sentir partout au Canada et ont une incidence sur les Canadiens particulièrement les peuples autochtones du Canada, les citoyens à faible revenu ainsi que les communautés nordiques, côtières et éloignées;

que le Parlement reconnaît qu'il est de la responsabilité de la présente génération de réduire au minimum les répercussions des changements climatiques pour les générations futures;

que les Nations Unies, le Parlement et la communauté scientifique considèrent que les changements climatiques ont une portée internationale et qu'il n'est

atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system;

Whereas Canada has also ratified the Paris Agreement, done in Paris on December 12, 2015, which entered into force in 2016, and the aims of that Agreement include holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change;

Whereas the Government of Canada is committed to achieving Canada's Nationally Determined Contribution – and increasing it over time – under the Paris Agreement by taking comprehensive action to reduce emissions across all sectors of the economy, accelerate clean economic growth and build resilience to the impacts of climate change;

Whereas it is recognized in the Pan-Canadian Framework on Clean Growth and Climate Change that climate change is a national problem that requires immediate action by all governments in Canada as well as by industry, non-governmental organizations and individual Canadians;

Whereas greenhouse gas emissions pricing is a core element of the Pan-Canadian Framework on Clean Growth and Climate Change;

Whereas behavioural change that leads to increased energy efficiency, to the use of cleaner energy, to the adoption of cleaner technologies and practices and to innovation is necessary for effective action against climate change;

Whereas the pricing of greenhouse gas emissions on a basis that increases over time is an appropriate and efficient way to create incentives for that behavioural change;

Whereas greenhouse gas emissions pricing reflects the “polluter pays” principle;

Whereas some provinces are developing or have implemented greenhouse gas emissions pricing systems;

Whereas 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;

And whereas it is necessary to create a federal greenhouse gas emissions pricing scheme to ensure that, taking provincial greenhouse gas emissions pricing

pas possible de les circonscrire à un territoire déterminé;

que le Canada a ratifié la Convention-cadre des Nations Unies sur les changements climatiques, faite à New York le 9 mai 1992, qui vise à stabiliser les concentrations de gaz à effet de serre dans l'atmosphère à un niveau qui empêche toute perturbation anthropique dangereuse du système climatique et que cette convention est entrée en vigueur en 1994;

que le Canada a également ratifié l'Accord de Paris, fait à Paris le 12 décembre 2015, qui vise notamment à contenir l'élévation de la température moyenne de la planète nettement en dessous de 2 °C par rapport aux niveaux préindustriels et à poursuivre l'action menée pour limiter l'élévation des températures à 1,5 °C par rapport aux niveaux préindustriels, étant entendu que cela réduirait sensiblement les risques et les effets des changements climatiques, et que cet accord est entré en vigueur en 2016;

que le gouvernement du Canada est déterminé à atteindre et à dépasser la contribution déterminée au niveau national du Canada établie dans le cadre de l'Accord de Paris, à l'aide d'une approche intégrée de réduction des émissions de gaz à effet de serre dans tous les secteurs d'activités économique, permettant la croissance accélérée d'une économie propre et le développement d'une résilience face aux répercussions des changements climatiques;

qu'il est reconnu dans le Cadre pancanadien sur la croissance propre et les changements climatiques que les changements climatiques constituent un problème national qui requiert une action immédiate de l'ensemble des gouvernements au Canada, ainsi que de l'industrie, des organisations non gouvernementales et des Canadiens;

que la tarification des émissions de gaz à effet de serre est un élément central du Cadre pancanadien sur la croissance propre et les changements climatiques;

que, pour combattre efficacement les changements climatiques, des changements de comportement menant à un accroissement de l'efficacité énergétique, à l'utilisation d'une énergie propre, à l'adoption de technologies et de pratiques moins polluantes et à l'innovation sont nécessaires;

qu'une tarification progressive des émissions de gaz à effet de serre est un moyen approprié et efficace d'encourager ces changements de comportement;

que la tarification des émissions de gaz à effet de serre est inspirée du principe du pollueur-payeur;

systems into account, greenhouse gas emissions pricing applies broadly in Canada;

que certaines provinces sont à élaborer ou ont mis en œuvre des systèmes de tarification des émissions de gaz à effet de serre;

que l'absence de tarification des émissions de gaz à effet de serre dans certaines provinces et le manque de rigueur de certains systèmes provinciaux de tarification des émissions de gaz à effet de serre sont susceptibles de contribuer à causer des dommages sérieux à l'environnement, y compris à sa diversité biologique, ainsi qu'à la santé et à la sécurité humaines et à la prospérité économique;

qu'il est nécessaire de créer un régime fédéral de tarification des émissions de gaz à effet de serre afin de permettre l'application étendue d'une telle tarification au Canada, tout en tenant compte des systèmes provinciaux de tarification des gaz à effet de serre,

Now, therefore, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Sa Majesté, sur l'avis et avec le consentement du Sénat et de la Chambre des communes du Canada, édicte :

Short Title

Short title

1 This Act may be cited as the *Greenhouse Gas Pollution Pricing Act*.

Titre abrégé

Titre abrégé

1 *Loi sur la tarification de la pollution causée par les gaz à effet de serre*.

Her Majesty

Her Majesty

2 This Act is binding on Her Majesty in right of Canada or a province.

Sa Majesté

Obligation de Sa Majesté

2 La présente loi lie Sa Majesté du chef du Canada ou d'une province.

PART 1

Fuel Charge

PARTIE 1

Redevance sur les combustibles

DIVISION 1

Interpretation and General Rules of Application

Interpretation

Definitions

3 The following definitions apply in this Part, Part 1 of Schedule 1 and Schedule 2.

adjustment day means any of commencement day, January 1, 2019, January 1, 2020, January 1, 2021,

SECTION 1

Interprétation et règles d'application générales

Définitions et interprétation

Définitions

3 Les définitions qui suivent s'appliquent à la présente partie, à la partie 1 de l'annexe 1 et à l'annexe 2.

activité agricole admissible S'entend des activités suivantes :

IN THE MATTER OF A REFERENCE to the Court of Appeal pursuant to section 8 of the *Courts of Justice Act*, RSO 1990, c. C.34, by Order-in-Council 1014/2018 respecting the constitutionality of the *Greenhouse Gas Pollution Pricing Act*, Part 5 of the *Budget Implementation Act, 2018, No. 1*, SC 2018, c. 12

Court of Appeal File No.: C65807

COURT OF APPEAL FOR ONTARIO
Proceedings commenced at Toronto

**FACTUM OF THE INTERVENOR,
INTERGENERATIONAL CLIMATE
COALITION
(GENERATION SQUEEZE ET AL)**

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