Court of Appeal File No.: C65807

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 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

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PART I – 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 approach.

2. Parliament's enactment of the *Greenhouse Gas Pollution Pricing Act* ("*Act*") falls within its jurisdiction to legislate for the peace, order, and good government of Canada on matters of national concern. The cumulative dimensions of GHG emissions is a matter of national concern that only Parliament can address. The means chosen to address this matter, carbon pricing, is widely recognized as an effective and essential measure to encourage the behavioural changes needed to reduce GHG emissions. The *Act* sets national standards to ensure that every province and territory encourages this essential behavioural modification.

3. Provinces are constitutionally unable to address the cumulative dimensions of GHG emissions. The *Act* complements and respects provincial efforts to reduce GHG emissions. It fills in gaps where provincial pricing systems do not meet minimum national standards. Parliament's authority to regulate the cumulative dimensions of GHG emissions does not impair provincial legislative powers, including a province's power to regulate intra-provincial emissions in pursuit of provincial objectives. The modern approach to federalism recognizes that overlapping powers are unavoidable.

4. The fuel charge and excess emissions charge under the *Act* are valid regulatory charges. They are the means of advancing the *Act*'s objectives. Their purpose is to encourage consumers and industry to change their behaviour in ways that will reduce their consumption of fossil fuels in order to reduce GHG emissions.

5. In the alternative, the fuel charge is a valid exercise of Parliament's taxation power and the excess emissions charge is a valid regulatory charge.

PART II – SUMMARY OF FACTS

6. Except as set out below, the Attorney General of Canada ("Canada") accepts the statement of facts set out in the Attorney General of Ontario's ("Ontario") factum. The following additional facts and clarifications are relevant to the issues before this Court.

A. Climate change, fueled by GHG emissions, is an international concern

7. Global climate change is happening now. The decisions we make today are critical to ensuring a safe and sustainable world for everyone, now and in the future. Climate records show that 17 of the 18 warmest years on record have occurred since 2001. The years 2014-17 are the hottest four years on record.

> Record of the Attorney General of Canada [**CR**] Vol 1, Tab 1, Affidavit of John Moffet, affirmed January 29, 2019, at paras 6, 7, 13-15, Exhibit E [**Moffet**].

8. Burning fossil fuels releases GHGs into the earth's atmosphere, which cause global climate change. The scientific properties of GHGs and the role they play in global climate change are well established. 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. Atmospheric CO_2 levels are higher now than at any time in the last 400,000 years – and are still climbing. Global net human-caused GHG emissions must fall by about 45% from 2010 levels by 2030 and reach "net zero" around 2050 to limit global warming to 1.5˚C and avoid the significantly more deleterious impacts of exceeding this temperature threshold. Thus, GHG emissions create a risk of harm to human health and the environment upon which life depends.

CR, Vol 1, Tab 1, Moffet at paras 8-15, 30-31, 61, Exhibit A at 8, Exhibit B at 5, Exhibit C at 2-8, 13-16, Exhibit D at 4-8, 11-14, Exhibit E at 2, 4-5; *House of Commons Debates*, 42nd Parl, 1st Sess [***Debates***] (23 February 2017) at 9294-5.

9. 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.

CR, Vol 1, Tab 1, Moffet at paras 14, 17-18, 20-21, Exhibit G at 178-81; *Debates* (1 May 2018) at 18981, 18984 (Hon. Catherine McKenna, Minister of Environment and Climate Change [ECC Minister]), (8 May 2018) at 19235, (23 February 2017) at 9295.

10. 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 weather events has significant economic costs. In the past decade, insurance claims in Canada from severe weather events have risen dramatically, now costing up to $1.2 billion a year.

CR, Vol 1, Tab 1, Moffet at paras 14, 16-20, 22-26, Exhibit D at 10, para B3.3, Exhibit G at 183-88, Exhibit E at 10-11; *Debates* (1 May 2018) at 18981 (ECC Minister), (23 February 2017) at 9295.

i. International agreements to address climate change as an "urgent" priority

11. 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

concentration everywhere. In 1992, emerging international concern about the risks associated with climate change caused by GHG emissions led to adoption of the *United Nations Framework Convention on Climate Change* ("*UNFCCC*"). Subsequent international agreements and actions under the *UNFCCC* reflect the escalating crisis.

CR, Vols 1-2, Tab 1, Moffet at paras 8, 27-45, Exhibits H, I.

12. 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, with the aim of returning GHG emissions to their 1990 levels. 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.

CR, Vols 1-2, Tab 1, Moffet at paras 29, 32-45, and Exhibit H at 4-6, art 2, art 4, paras 2(a), 2(b) and at 10-12, art 7.

13. 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. The 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". The Parties 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."

CR, Vols 1-2, Tab 1, Moffet at paras 35, 37-38, 40, Exhibit I at 2, 22-23, art 1, para 1(a), art 2, art 4.

14. On October 5, 2016, Canada ratified the *Paris Agreement,* under which Canada must report and account for its progress towards achieving its nationally determined contribution. Canada first communicated its intended nationally determined contribution 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 is required to communicate its next, more ambitious, target by 2025.

CR, Vol 1, Tab 1, Moffet at paras 42-45.

ii. International support for and trend towards widespread carbon pricing

15. There is international consensus that carbon pricing[1] is essential to achieve the necessary global GHG emissions reductions. The International Monetary Fund describes carbon pricing as potentially 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 from around the world, reported that "a well-designed carbon price is an indispensable part of a strategy for reducing emissions in an efficient way."

CR, Vols 1-2, Tab 1, Moffet at paras 46-48, 50, Exhibit K at i, 1-3, 9, Exhibit N at 5.

[1] 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), 61, Exhibit R at 7.

B. The cumulative dimensions of GHG emissions is a matter of national concern

i. Canada's GHG emissions

16. The *UNFCCC* defines "greenhouse gases" as "those gaseous constituents of the atmosphere, both natural and anthropogenic, that absorb and re-emit infrared radiation." The *UNFCCC* requires reporting for seven GHGs: CO_2, methane (CH_4), nitrous oxide (N_2O), hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride (SF_6), and nitrogen trifluoride (NF_3). The concept of "global warming potential" allows comparison of the ability of each GHG to trap heat in the atmosphere relative to CO_2, which has a nominal global warming potential of 1.

CR, Vols 1-2, Tab 1, Moffet at paras 30-31, 61, Exhibit H at 3; CR, Vol 3, Tab 2, Affidavit of Dominique Blain, affirmed January 25, 2019, at paras 3, 6-11 [**Blain**].

17. Canada prepares GHG inventory reports in accordance with the *UNFCCC* Reporting Guidelines. Canada's most recent National Inventory Report reported emissions estimates between 1990 and 2016. These estimates show that, since 2005, annual emissions fluctuated between 2005 and 2008, dropped in 2009 due to the global financial crisis, then gradually increased until 2013. Emissions dropped slightly in 2015 and again in 2016. Canada's GHG emissions in 2005 were 732 megatonnes (732 million tonnes) of CO_2 equivalent (Mt CO_2e). Canada's 2016 GHG emissions were 704 Mt CO_2e. This is a net decrease of 28 Mt, or 3.8%, from 2005 emissions. Canada's 2030 target under the *Paris Agreement* is 517 Mt CO_2e.

CR, Vol 3, Tab 2, Blain at paras 10-18, CR, Vol 1, Tab 1, Moffet at para 64.

18. GHG emissions and emissions trends vary by province. Since 2005, GHG emissions in Alberta, Saskatchewan, Manitoba, Newfoundland and Labrador, Northwest Territories, and Nunavut have increased, while emissions in British Columbia, Ontario, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, and Yukon have decreased. Ontario's emissions reductions are primarily due to the closure of coal-fired electricity generation plants.

In British Columbia, 5-15% of the emissions reductions have been attributed to carbon pricing. The top five emitters in 2016 were Alberta, Ontario, Quebec, Saskatchewan, and British Columbia. Ontario's GHG emissions accounted for 22.8% of Canada's emissions in 2016.

CR, Vol 3, Tab 2, Blain at para 21, Exhibit A at 13-14; CR, Vol 2, Tab 1, Moffet at Exhibit N at 10; CR, Vol 4, Tab 5, Affidavit of Nicholas Rivers, affirmed January 25, 2019, Exhibit B at 23-24 [**Rivers**].

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

19. 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.

CR, Vols 1-2, Tab 1, Moffet Affidavit at paras 53-55, Exhibit Q at 1.

20. The *Vancouver Declaration* led to four joint Federal-Provincial-Territorial working groups including a Working Group on Carbon Pricing Mechanisms ("Working Group"). The 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 consensus basis.

CR, Vols 1-2, Tab 1, Moffet at paras 56-57, Exhibit R.

21. The 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 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 GHG emissions reductions at the national level.

CR, Vols 1-2, Tab 1, Moffet at paras 58-70, 63, Exhibit R at 5, 20-25; CR, Vol 4, Tab 3, Affidavit of Warren Goodlet, affirmed January 29, 2019, at paras 8-20 [**Goodlet**].

iii. The *Pan-Canadian Approach to Pricing Carbon Pollution*

22. 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.

Debates (3 October 2016) at 5359-61 (Right Hon. Justin Trudeau, Prime Minister of Canada); CR, Vols 1, 3, Tab 1, Moffet at paras 71, 72, Exhibit S.

23. 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". It was designed to achieve this goal while recognizing existing provincial systems and giving provinces and territories flexibility in developing their own carbon pricing system. The Benchmark provides guidance on the scope of GHG emissions to be covered by carbon pricing, provides criteria for each type of carbon pricing system, and includes minimum escalating stringency requirements. Finally, the Benchmark provides that

the Government of Canada will implement a carbon pricing system that would apply in jurisdictions that do not develop a system that aligns with the Benchmark.

CR, Vols 1, 3, Tab 1, Moffet at paras 72-76, 89-90, Exhibits S, W, and X.

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

24. The *Vancouver Declaration* and the four working group reports[2] 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 country'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. Eight provinces, including Ontario, and all three territories joined the *Pan-Canadian Framework* on December 9, 2016. Manitoba joined on February 23, 2018. Saskatchewan has not joined.

CR, Vols 1-3, Tab 1, Moffet at paras 46, 48-50, 77, 78, 82, 87, 120-1, Exhibit T at "Foreword", 1-5, Exhibit K at 3, 46-49, Exhibit N at 5-6, Exhibit DD; CR, Vol 4, Tab 3, Goodlet at para 29.

25. Pricing carbon pollution is central to the *Pan-Canadian Framework*, which reiterates the broad recognition of carbon pricing as one of the most effective and efficient policy approaches for reducing GHG emissions. The *Pan-Canadian Framework* rearticulated the pan-Canadian approach to carbon pricing and annexed the Benchmark. Because carbon pricing alone is not sufficient for Canada to reach its *Paris Agreement* emissions reduction target, the *Pan-Canadian Framework* also outlines extensive complementary measures.

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[2] These working group reports include the *Specific Mitigation Opportunities Working Group Final Report* referred to at para 29 of Ontario's factum.

CR, Vols 1, 3, Tab 1, Moffet at paras 46, 48, 82-87, 137 Exhibit T, ch 2, 3, 5, 6 and Annex I; House of Commons, Standing Committee on Finance, *Evidence*, 42nd Parl, 1st Sess, No. 148 (1 May 2018) at 5, 8 (Moffet) [**FINA**]; Senate, Standing Senate Committee on Energy, the Environment and Natural Resources, *Evidence*, 42nd Parl, 1st Sess, No 44 (1 May 2018) at 44:9-11 (Moffet) [**ENEV**].

26. Despite joining the *Pan-Canadian Framework*, Ontario revoked its cap and trade carbon pricing system in 2018. Ontario also cancelled the programs Canada agreed to fund through the Low Carbon Economy Leadership Fund and a total of 752 renewable energy projects. Under federal and provincial policies in place in September 2018, not including the federal backstop, emissions in Ontario were projected to only decrease by 1 Mt CO_2e between 2016 and 2030. The GHG mitigation targets in Ontario's new proposed climate change plan are substantially less ambitious than under its previous plan. It largely relies on past emissions reductions achieved from phasing out coal-fired electricity generation, which will occur in all provinces by 2030. Going forward, it only aims for a small amount of emissions reductions beyond those that they predict will occur without any policy support. There is currently insufficient information to assess the potential emissions reductions achievable under their proposed industry performance standards for large emitters. If developed, this proposed action would be an output-based carbon pricing system.[3]

CR, Vol 1, 3, Tab 1, Moffet at paras 79, 135, 138, Exhibit RR; CR, Vol 4, Tab 3, Goodlet at paras 29-32; CR, Vol 4, Tab 5, Rivers at paras 10-11, Exhibit D; Ontario Record, Tab 4, pp 34-42.

[3] Canada disagrees with the unsupported normative statements in paras 7, 11, and the misstatement of why federal funding was cancelled in para 44 of Ontario's Statement of Facts.

C. The *Greenhouse Gas Pollution Pricing Act*

i. Additional pre-enactment consultation and policy development

27. Following up on its undertaking to introduce a federal carbon pricing system, the Government of Canada released a *Technical Paper* outlining the elements and operation of the proposed system in May 2017, inviting feedback. It explained the two complementary components of the federal system: a fuel charge and an Output-Based Pricing System ("OBPS").

CR, Vols 1, 3, Tab 1, Moffet at paras 88, Exhibit V.

28. During 2017, the Government of Canada also published *Guidance on the Pan-Canadian Carbon Pollution Pricing Benchmark* and *Supplemental Benchmark Guidance*. The Benchmark and the guidance documents set out common, basic requirements for carbon pricing systems while providing provinces and territories with flexibility to design their own system.

CR, Vols 1, 3, Tab 1, Moffet at paras 72-76, 89-91, Exhibits S at 2-3, W, and X.

29. In late 2017, the Ministers of Environment and Climate Change ("ECC") and Finance wrote to their provincial counterparts to outline the next steps in the federal government's process to price carbon. Provinces and territories opting to establish or maintain their own carbon pricing system were asked to outline how they were implementing carbon pricing by September 1, 2018. They were advised that "[b]ased on the information provided, as well as follow-up information as needed, Canada will work with the provinces and territories to confirm whether their carbon pricing system meets the Benchmark."

CR, Vol 1, Tab 1, Moffet at para 92.

30. 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 explains 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, explained how output-based standards for industrial sectors would be established, and indicated that Environment and Climate Change Canada ("ECCC") would undertake structured engagement on the development of the OBPS.

CR, Vols 1, 3, Tab 1, Moffet at paras 93-95, and Exhibit Y at 1-2, 6-7.

ii. Parliament's objective: Implementing a national carbon pricing scheme to reduce GHG emissions

31. The *Act*, introduced on March 27, 2018 as Bill C-74, 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.

> *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, reproduced in Schedule B to Ontario's Factum [***Act***], Preamble.

32. Parliament's regulatory objective of incentivizing the behavioural changes necessary to reduce cumulative GHG emissions is reflected throughout debate on Bill C-74 and before the Parliamentary Committees considering it. For example, during second reading the Minister of ECC stated, "pricing pollution is making a major contribution to helping Canada meet its climate targets under the *Paris Agreement*". 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".

ENEV, No 46 (22 May 2018) at 46:7-8; *Debates* (23 April 2018) at 18612 (Minister of Finance), (1 May 2018) at 18982 (ECC Minister), (31 May 2018) at 19985 (ECC Minister), (16 April 2018) at 18315, (23 April 2018) at 18629, (8 May 2018) at 19238; FINA, No 146 (25 April 2018) at 5-6 (Judy Meltzer, Director General, Carbon Pricing Bureau, ECCC); Senate, Standing Senate Committee on Agriculture and Forestry, 42nd Parl, 1st Sess, No 50 (1 May 2018) at 50:9-10 (Moffet) [**AGFO**]; ENEV, No 44 (1 May 2018) at 44:9-10 (Moffet).

iii. Parliament understood that carbon pricing is an effective way to reduce GHG emissions

33. 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 pricing is one of the most cost-effective ways to reduce emissions." 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."

Act, Preamble; *Debates* (1 May 2018) at 18982 (ECC Minister), (8 May 2018) at 19236, 19238, (30 May 2018) at 19972-73; FINA, No 146 (April 25, 2018) at 5 (Meltzer), No 151 (7 May 2018) at 1 (Andrew Leach, University of Alberta), and 3 (Dale Beugin, Canada's Ecofiscal Commission); ENEV, No 46 (22 May 2018) at 46:8 (ECC Minister), No 45 (10 May 2018) at 45:47 (Martha Hall Finlay, Canada West Foundation), and 45:62 (Beugin); AGFO, No 52 (22 May 2018) at 52:34-35 (Beugin); CR, Vol, 3, Tab 5, Rivers at paras 5, 6, Exhibit B.

34. 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 across Canada would achieve an 80 to 90 Mt CO_2e reduction in annual GHG emissions by 2022 –contributing significantly towards meeting Canada's *Paris Agreement* targets, with minimal impact on estimated GDP growth.[4]

CR, Vols 1, 3, Tab 1, Moffet at paras 97-99 and Exhibit Z at 3-5; CR, Vol 4, Tab 3, Goodlet at paras 25-26; ENEV, No 44 (1 May 2018) at 44:9-10 (Moffet); FINA, No 148 (1 May 2018) at 5-6 (Moffet), No 152 (8 May 2018) at 7-8 (Moffet).

iv. Architecture and operation of the *Act*

35. The *Act* provides the legal framework and enabling authorities for the federal carbon pricing system. Part 1 of the *Act* implements the fuel charge and 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 system for pricing GHG emissions to ensure that comprehensive carbon pricing applies throughout Canada, with increasing stringency over time.

Act, Part 1, ss. 3-168, and Part 2, ss. 169-261; CR, Vol 1, Tab 1, Moffet at paras 101-2.

36. The fuel charge under Part 1 applies to 22 kinds of GHG emitting fuels, including common fuels like gasoline, light fuel-oil (diesel), and natural gas, as well as less common fuels like methanol and coke oven gas. The specific 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, with annual increases of $10 per tonne, rising to $50 per tonne in 2022.

Act, Schedule 2, Table 2, Item 6; CR, Vol 1, Tab 1, Moffet at para 104.

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[4] The estimated GHG emissions reduction impact of carbon pricing throughout 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: CR, Vols 1, 3, Moffet at para 123 at Exhibit CC; CR, Vol 4, Tab 3, Goodlet at paras 28-30.

37. The fuel charge will apply to 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. Most commonly, registered distributors are fuel producers or wholesale level fuel distributors, typically large businesses. Generally, they will 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.

Act, s 55; CR, Vol 1, Tab 1, Moffet at para 105; CR, Vol 3, Tab 5, Rivers at para 6, Exhibit B at 2, 4-7.

38. 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 their excess GHG emissions are priced under Part 2 of the *Act*. As another example, fuel used by farmers exclusively for certain farming activities is exempted from carbon pricing.

Act, ss 28-36, esp ss 36(1)(b)(i), (v), (vii); CR, Vol 1, Tab 1, Moffet at paras 106-8.

39. Part 2 of the *Act* sets out the main powers and authorities for the OBPS for GHG emissions by large industrial facilities. Part 2 will apply to "covered facilities" and sets out registration and GHG emissions reporting requirements. Covered facilities will be required to determine the quantity of GHG they emit and compare this quantity against the prescribed GHG emissions limit. Schedule 3 lists the GHGs to which Part 2 of the *Act* applies.

Act, s 169, Schedule 3; ENEV, No 44 (1 May 2018) at 44:14, 44:20-21; CR, Vol 1, Tab 1, Moffet at para 110-2.

40. 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 a sector specific output-

based standard. The output-based standard for a sector will be set as a percentage of the quantity of GHGs emitted on average by that sector in the course of its activity (i.e. production of a product) in proposed regulations. The most recent update on the OBPS indicates that most sectors will have their output-based standard set at 80% of the sectors' average GHG emissions intensity. A subset of sectors assessed to be in a high competitiveness risk category will have their output-based standard set at 90% or 95% of the sectors' average emissions intensity.

Act, s 174; CR, Vols 1, 3, Tab 1, Moffet at paras 106-7, 111, 113, 117, 127.

41. Covered facilities that must compensate for excess emissions may do so in three ways. They may: submit surplus credits they have earned in the past, or that they have acquired from other facilities; submit other prescribed credits that they acquired; or 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, facilities that emit less than their annual limit will receive surplus credits, which they 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.

Act, ss 174, 175, 185, Schedule 4; CR, Vols 1-2, Tab 1, Moffet at paras 114-5, Exhibit P at 27.

42. 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 decision to "the purpose of ensuring that the pricing of greenhouse gas emissions is applied

broadly in Canada" and requires the Governor in Council to "take into account, as the primary factor, the stringency of provincial pricing mechanisms for greenhouse gas emissions".

Act, ss 166(2), 166(3), 189(1) and 189(2); FINA, No 157 (23 May 2018) at 12-14; CR, Vol 1, Tab 1, Moffet at para 102.

43. On October 23, 2018, the Government of Canada announced the outcome of its stringency assessment. It is proposed that the fuel charge under Part 1 will apply in Ontario, Saskatchewan, Manitoba, and New Brunswick starting in April 2019. The OBPS under Part 2 started applying in Ontario, Manitoba, New Brunswick, Prince Edward Island, and partially in Saskatchewan on January 1, 2019. For the territories, the Government of the Northwest Territories is planning to implement a system that meets the Benchmark on July 1, 2019. It is proposed that Parts 1 and 2 of the *Act* will apply in Yukon and Nunavut starting on July 1, 2019, to ensure alignment across the territories.[5]

44. Where the federal carbon pricing system applies, all direct proceeds from the charges must be returned to the jurisdiction of origin. The *Act* provides that they may be returned to the province, or to prescribed persons, or to a combination of both. Jurisdictions that voluntarily adopted the federal system will receive the proceeds directly from the federal government, leaving those provinces to decide how to use them. For Ontario, Saskatchewan, Manitoba, and New Brunswick, the federal government will return the bulk (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

[5] The OBPS only applies partially in Saskatchewan, because Saskatchewan implemented its own output-based performance standards pricing system on January 1, 2019. The federal backstop will apply 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 119-21, 123, 126, Exhibits DD-JJ.

Incentive payments will be returned to the originating jurisdictions 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.

> *Act*, ss 165(2) and 188(1); *Budget Implementation Act, 2018, No 2,* SC 2018, c. 27, s. 13, CR, Vols 1, 3, Tabs 1, 3, Moffet at paras 122, 123, Exhibits BB-FF, GG, LL-OO.

D. Complementary measures to reduce Canada's GHG emissions

45. Ensuring that carbon pricing applies throughout Canada is an essential part of Canada's approach to addressing the cumulative dimensions of GHG emissions, but it is not Canada's only measure to reduce GHG emissions on a national scale. Complementary federal GHG emissions reduction measures are in place or planned under the *Canadian Environmental Protection Act* ("*CEPA*")*, 1999*. The federal government is also investing in clean technology research, innovation, and other GHG emissions reduction programs.

> CR, Vols 1, 3, Tab 1, Moffet at paras 82, 87, 123, 129-143, Exhibits T at 1-5, 9-26, 37-44, DD-JJ.

E. Canada's environmental obligations and relations with its *Paris Agreement* partners

46. Canada's *Paris Agreement* partners in Europe have emphasized the importance they place on the *Paris Agreement* as a relevant factor in their trade relations going forward. The Canada-European Union Comprehensive Economic and Trade Agreement ("CETA") frames Canada's trade relations with the European Union's Member States. After the *Paris Agreement* was ratified, it was of great importance to a number of the Member States that a commitment to environmental protection, including implementation of the *Paris Agreement,* be acknowledged. As a result, the CETA Parties negotiated a Joint Interpretive Instrument on CETA among Canada, the European Union, and its Member States. The Joint Interpretive Instrument identifies the *Paris Agreement* as "an important shared responsibility for the European Union

and its Member States and Canada" and recognizes the Parties' agreement "not to lower levels of environmental protection in order to encourage trade or investment".

CR, Vol 4, Tab 4, Affidavit of André François Giroux, affirmed January 11, 2019, at paras 10-16, Exhibit B at 7-8 [**Giroux**].

47. CETA has yet to be ratified by 17 of the 28 Member States, including by countries such as France, Italy, and Germany. Should it become clear that Canada is not on track to meet its *Paris Agreement* GHG emissions reduction target, countries that have still not ratified CETA may not proceed. France, in particular, has expressed concern over making trade deals with countries that do not abide by climate conventions.

CR, Vol 4, Tab 4, Giroux at paras 11, 16-20, Exhibit B at 7-8.

PART III – CANADA'S STATEMENT OF POSITION AND ARGUMENT

48. The whole *Act* is constitutional. The cumulative dimensions of GHG emissions is a matter of national concern. Thus, Parliament has jurisdiction to legislate for the peace, order, and good government of Canada under s. 91 of the *Constitution Act, 1867*.

49. The fuel charge and excess emissions charge are regulatory charges intended to change behaviour, not taxes enacted to raise revenue for federal purposes.

50. In the alternative, the fuel charge is a constitutionally enacted tax.

A. Parliament has legislative competence to enact the *Act* under the peace, order, and good government power to address matters of national concern

51. The *Act* comes within Parliament's jurisdiction under the peace, order, and good government power because the cumulative dimensions of GHG emissions is a matter of national concern. Lord Watson first articulated the national concern doctrine 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".

Ontario (AG) v. Canada (AG), [1896] UKPC 20 at 9, [1896] AC 348.

52. In *Crown Zellerbach*, the Supreme Court comprehensively reviewed the jurisprudential evolution of the national concern doctrine, which reflects and respects fundamental principles of Canadian federalism and the "equilibrium of the Constitution". After confirming that the national concern doctrine is distinct from the national emergency doctrine, 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].
>
> *R v. Crown Zellerbach Canada Ltd.*, [1988] 1 SCR 401 at 423-34 [***Crown Zellerbach***].

53. The cumulative dimensions of GHG emissions is a matter of national concern that only Parliament can address. Indeed, the cumulative dimensions of GHG emissions is a matter of such international concern that it is the subject of joint international efforts, with a view to international solutions. GHG emissions, regardless of their origin, have extra-provincial and global impacts. The cumulative dimensions of GHG emissions are sufficiently defined to have a singleness, distinctiveness, and indivisibility distinguishing them from matters of merely provincial or local concern. Provinces are constitutionally unable to address the cumulative

dimensions of GHG emissions. A failure by one province to reduce intra-provincial GHG emissions will harm other provinces and territories, harm Canada's relations with other countries, impede Canada's abilities to meet its emissions reduction targets, and impede international efforts to mitigate climate change. Recognizing the cumulative dimensions of GHG emissions as a matter of national concern has a reconcilable scale of impact. It will not skew the fundamental jurisdictional division of powers.

i. The *Act*'s pith and substance is the cumulative dimensions of GHG emissions – its purpose is to ensure GHG emissions pricing applies throughout Canada to create incentives for the behavioural changes necessary to reduce emissions

54. The first step in a division of powers analysis is an inquiry into the true nature of the law to determine its matter, or pith and substance. Considering the law's purpose and its legal and practical effects helps identify the matter to which the *Act* relates. The *Act*'s purpose and effect show that its pith and substance relates to the cumulative dimensions of GHG emissions.

> *Reference re: Firearms Act (Can.)*, 2000 SCC 31 at paras 15-16, [2000] 1 SCR 783 [***Firearms Reference***]; *Quebec (AG) v. Canada (AG)*, 2015 SCC 14 at paras 28, 29, [2015] 1 SCR 693 [***Firearms Sequel***]; *Reference re Securities Act*, 2011 SCC 66 at paras 63-64, [2011] 3 SCR 837 [***Securities Reference***]; *Reference re Pan-Canadian Securities Regulation*, 2018 SCC 48 at para 86 [***Pan-Canadian Securities***].

55. 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. Purpose may also be determined by considering the problem that Parliament seeks to remedy. Ontario conflates the *Act*'s purpose with Canada's broader commitment to achieving Canada's nationally determined contribution under the *Paris Agreement* by taking comprehensive action. All of the relevant indicators confirm that the dominant purpose of the *Act* is to create incentives

for the behavioural changes and innovative solutions necessary to reduce cumulative GHG emissions by ensuring that a minimum GHG emissions price applies throughout Canada.

Securities Reference at para 64; *Firearms Reference* at para 17; *Act*, Preamble, paras 8, 11-16; See paras 22, 23, 25, 31-34 above. Contra Ontario's Factum at paras 51-53.

56. The *Act*'s effect aligns with its purpose. The inquiry into the effect of the *Act* "is directed to how the law sets out to achieve its purpose in order to better understand its 'total meaning'". 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 emissions-intensive, trade-exposed 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. Thus, the *Act* provides for a minimum national price signal.

Firearms Reference at para 18; *Act*, Preamble, para 16; see paras 35-43 above.

57. Ontario incorrectly compares the *Act* to the statute considered by the Supreme Court in *Reference Re Anti-Inflation Act*, which 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 this kind of inflation legislation. The *Act* ensures that the external, extra-provincial costs of GHG emissions are internalized, but it does not set the final retail price of products. Sellers are free to choose whether to raise, maintain, or lower their prices, based on how successfully they are able to reduce their GHG emissions, making their own price decisions based on costs. Achieving efficiencies will be a competitive advantage.

Reference re Anti-Inflation Act, [1976] 2 SCR 373

ii. The cumulative dimensions of GHG emissions is a matter of national concern

58. 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 essential character of the *Act* comes under Parliament's peace, order, and good government power because the cumulative dimensions of GHG emissions is a matter of national concern.

59. The cumulative dimensions of GHG emissions is a new matter that did not exist at Confederation. Rapidly escalating climate change caused by anthropogenic GHG emissions was unimaginable in 1867 when provincial and federal constitutional "matters" were assigned. Scientists had only begun considering the role of CO_2 in the earth's atmosphere. Matters of local air pollution bear no resemblance to the now known global threat of GHG emissions.

> Spencer R. Weart, *The Discovery of Global Warming* (Cambridge, MA: Harvard University Press, 2008) ch. 1-2; James R. Fleming, *Historical Perspectives on Climate Change* (Oxford: Oxford University Press, 1998) ch. 6.

60. GHG emissions are a distinct type of transboundary pollution. Their cumulative detrimental impacts are significant and their reduction requires urgent, coordinated efforts. The Supreme Court has repeatedly recognized the importance of environmental protection. It has declared that "[t]he protection of the environment has become one of the major challenges of our time"; recognized "environmental protection … as a fundamental value in Canadian society"; emphasized that environmental protection measures relate "to a public purpose of superordinate importance"; and reiterated 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"....

Friends of the Oldman River Society v. Canada (Minister of Transport), [1992] 1 SCR 3 at 16 [***Oldman River***]; *Ontario v. Canadian Pacific Ltd.*., [1995] 2 SCR 1031 at para 55; *R v. Hydro-Québec*, [1997] 3 SCR 213 at para 112 [***Hydro-Québec***]; *British Columbia v. Canadian Forest Products Ltd.*, 2004 SCC 38 at para 7, [2004] 2 SCR 74, citing *114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town)*, 2001 SCC 40 at para 1, [2001] 2 SCR 241 [***Spraytech***].

61. Given their role in causing climate change, the cumulative dimensions of GHG emissions are a national and international concern. The *UNFCCC* and related international agreements confirm the international community's concern and Canada's obligations in respect of addressing GHG emissions. They have "predominately extra-provincial as well as international character and implications" – GHG emissions, regardless of their origin, have extra-provincial, national, and global impacts. The scientific properties of GHGs and their role in global climate change are well established. The existing and anticipated detrimental national and global impacts of climate change are not correlated to the location of the GHG emission source. The cumulative dimensions of GHG emissions create a risk of harm to both human health and the environment upon which life depends, impacts that affect Canada as a whole. The cumulative dimensions of GHG emissions is a quintessential matter of national concern.

CR, Vol 1, Tab 1, Moffet at paras 8-25, Exhibits A-G; *Crown Zellerbach* at 436-7; 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.

iii. The cumulative dimensions of GHG emissions is a single, distinct, and indivisible subject-matter

62. The *Act* deals with a single, distinct, and indivisible matter – the cumulative dimensions of GHG emissions. Ontario's submissions inaccurately conflate GHG emissions with environmental pollution generally, air pollution categorically, or even with the environment as a whole. Canada is not claiming that pollution generally, or air pollution at large, are matters of national concern. Nor is Canada claiming that the environment generally is a matter of

national concern. Canada only says that the cumulative dimensions of GHG emissions is a matter of national concern. GHG emissions are a discrete and distinct form of air pollution. Their cumulative effect provides the necessary unity and indivisibility and distinguishes the matter from provincial jurisdiction over local GHG emissions.

63. The *UNFCCC* and subsequent international agreements explicitly define and target GHG emissions. The United Nations' identification of GHG emissions as a distinct matter provides definable boundaries for scoping GHG emissions as a Canadian constitutional concept.

CR Vols 1-2, Tab 1, Moffet at paras 8, 27-44, 112, Exhibits H and I.

64. Like marine pollution in *Crown Zellerbach*, the cumulative dimensions of GHG emissions has sufficiently distinct and separate characteristics to make it amenable to Parliament's residual power. GHGs are a unique transboundary type of pollution, defined based on specific scientific characteristics, including their global warming potential. They are a measurable and persistent atmospheric pollutant. Their interprovincial, national, and global effects are well established. While many sectors generate GHG emissions, their regulation implicates only one specific aspect of those sectors – the GHG emissions they generate. The cumulative dimensions of GHG emissions is a matter that is suitable for regulation under the national concern doctrine. "[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."

CR, Vol 1, Tab 1, Moffet at para 61, Exhibit D at 4; CR, Vol 3, Tab 2, Blain generally, esp paras 7-8, 16-19, 21; Nathalie Chalifour, "Canadian Climate Federalism: Parliament's Ample Constitutional Authority to Legislate GHG Emissions" 2016 36 NJCL 331 at 365-67 [***Canadian Climate Federalism***].

65. Contrary to Ontario's submissions at paragraph 72 of its factum, the precise scientific characteristics of GHG emissions contrast starkly with the broad definition of "toxic substance" in the former *CEPA*. In *Hydro-Québec*, a majority of the Supreme Court upheld federal regulation of toxic substances under Part II of the *CEPA* as a valid exercise of Parliament's criminal law power. They found it unnecessary to determine whether it could also be upheld under the national concern doctrine. Ontario relies on the dissent's view that Part II could not be upheld under the national concern doctrine. The dissent's reasoning was that there was "no analogous clear distinction between types of toxic 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." In stark contrast, the *Act* targets a single category of pollutants with indisputable persistence, atmospheric diffusion, harmful effects, and interprovincial aspects: GHG emissions.

Hydro-Québec at paras 68-70, 75, 110, 161.

66. Further, while the amorphous definition of "toxic substance" was central to this issue in *Hydro-Québec*, the *Act*'s definition of "fuel" is neither amorphous, nor central. The Part 1 fuel charge applies to the fuels listed in Schedule 2, each of which emit GHGs when burned and for which the charge rate is based on their CO_2e emissions factor. The Part 2 OBPS applies to the GHGs listed in Schedule 3 of the *Act*, being the *UNFCCC* defined GHGs. While the *Act* gives the Governor in Council discretion to prescribe additional substances as a "fuel" for Schedule 2 and to add a "gas… and its global warming potential" to Schedule 3, the *Act*'s purpose, and the *UNFCCC*'s reporting requirements, circumscribes this discretion. All grants of discretionary administrative power are circumscribed by the statutory context in which they arise.

CR Vol 1, Tab 1, Moffet at para 104; *Act*, Preamble, ss. 3, 166(1), 169, 190, Schedules 2, 3; *Katz Group Canada Inc. v. Ontario (Health and Long-Term Care)*,

2013 SCC 64 at paras 24-28, [2013] 3 SCR 810; *Canada v. Société des alcools du Québec*, 2002 FCA 69 at para 33.

67. The cumulative dimensions of GHG emissions is a single, distinct, and indivisible matter suitable for regulation under the national concern doctrine.

iv. A provincial failure to regulate GHG emissions will negatively affect extra-provincial interests

68. The "provincial inability" test asks "what would be the effect on extra-provincial interests of a provincial failure" to regulate the matter. Contrary to Ontario's submissions, this test does not ask whether provinces can constitutionally address GHG emissions, or whether provinces are taking steps to reduce GHG emissions. Canada agrees that provinces can and do address GHG emissions under various provincial heads of power. But, the test asks what would be the effect if a province fails to do so. Because the answer is that a provincial failure to address GHG emissions, particularly a large emitting province, will adversely affect extra-provincial interests, this test is met. The cumulative dimensions of GHG emissions mean they necessarily have interprovincial and international effects. "It is a notorious fact that air is not impounded by provincial boundaries." In the case of GHG emissions, this is compounded by their contribution to global climate change regardless of the location of their source. No single province or territory can constitutionally address the cumulative dimensions of GHG emissions.

Crown Zellerbach at 432-434; *Pan-Canadian Securities* at paras 113-16; *Canada Metal Co. v. R* (1982), 144 DLR (3d) 124 (Man QB) at para 16; *Interprovincial Co-Operatives Ltd. et al. v R*, [1976] 1 SCR 477 at 516 [***Interprovincial Co-Operatives***]; *Canadian Climate Federalism* at 367-69.

69. Only Parliament can ensure that GHG emissions pricing applies throughout Canada. While carbon pricing is the means, not the matter, the national and international expert evidence is convergent in finding that pricing carbon reduces GHG emissions. The means used helps demonstrate the focused nature of the concern. Many expert international bodies, such as the

International Monetary Fund, consider carbon pricing to be a necessary measure. The failure of some provinces to implement carbon pricing undermines the GHG emissions pricing measures taken by the rest. Additionally, interprovincial carbon leakage is a possible negative impact of inconsistent GHG emissions pricing among provinces. Carbon leakage refers to an increase in carbon emissions in one jurisdiction as a result of a stricter emissions policy in another. This may occur if, for reasons of costs, emitting industries transfer production from a jurisdiction with a carbon price to a jurisdiction that does not price carbon.

CR, Vol 3, Tab 5, Rivers at para 6, Exhibit B; CR, Vols 1-2, Tab 1, Moffet at paras 46-52, 59, 65, 67, Exhibit N at 6, R at 4, 5, 43, 56-57; ENEV, No 44 (1-3 May 2018) at 44:14 (Philippe Giguère, Manager, Legislative Policy, ECCC), 44:20-21 (Moffet), and 44:30-32 (Peter Boag, President and CEO, Canadian Fuels Association), No 44 (3 May 2018) at 44:65-68 (Adam Auer, Vice President, Environment and Sustainability, Cement Association of Canada).

70. Finally, actions taken in Canada toward fulfilling Canada's contribution to achieving the *Paris Agreement* objectives are important in Canada's ongoing relationships with its *Paris Agreement* partners. The European Commission and a number of key Member States are watching the developments in Canada closely. If it becomes clear that Canada is not on track to meet its GHG emissions reduction targets, some European countries that have not ratified CETA may not proceed. This possibility represents a real risk associated with insufficient action on GHG emissions. Thus, a provincial failure to act could undermine an agreement that is important to the country's prosperity as a whole.

CR, Vol 4, Tab 4, Giroux at paras 3, 7-8, 10, 16-21.

v. The scale of impact on provincial jurisdiction is reconcilable with the fundamental distribution of legislative power under the Constitution

71. Recognizing the cumulative dimensions of GHG emissions as a matter of national concern within Parliament's legislative jurisdiction will 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.

72. Ontario again conflates GHG emissions with pollution generally, the environment as a whole, or "any kind of gas". Ontario also ignores that it is already well established that Parliament's legislative powers, including its 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.

> *Crown Zellerbach*; *Hydro-Québec*; *Oldman River* at 63-64; *Syncrude Canada Ltd. v Canada (Attorney General)*, 2016 FCA 160 [***Syncrude Canada***]; *Interprovincial Co-Operatives*; Peter W. Hogg, *Constitutional Law of Canada*, loose-leaf, 5th ed (Toronto: Carswell, 2007) at 30.7 "Environmental protection"; Ontario's Factum at paras 84, 85, 91.

73. Federal jurisdiction to regulate to address the cumulative dimensions of GHG emissions will not impair a provincial legislature's power to continue regulating all aspects of local matters, including intra-provincial GHG emissions. The modern approach to federalism recognizes that areas of overlapping powers are unavoidable. 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."

> *Canadian Western Bank v. Alberta*, 2007 SCC 22 at paras 26, 28-30, 36, 42, [2007] 2 SCR 3 [***Canadian Western Bank***]; *Pan-Canadian Securities* at para 114; *Securities Reference* at para 66; *Law Society of British Columbia v. Mangat*, 2001 SCC 67 at paras 23, 49, [2001] 3 SCR 113; *Ontario Hydro v. Ontario (LRB)*, [1993] 3 SCR 327

at 339-40; Morris J. Fish, "The Effect of Alcohol on the Canadian Constitution … Seriously" (2011) 57 McGill L. J. 189 at 204-05; 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; Peter W. Hogg, "Constitutional Authority over Greenhouse Gas Emissions", (2009) 46:2 Alta. L. Rev. 507 at 510-11; *Canadian Climate Federalism* at 399-400; contra Ontario's Factum at paras 57-9, 65, 90.

74. The double aspect doctrine ensures continued space for the operation of 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 practices, transportation, industry, forestry, agriculture, and waste management, which are within the provinces' jurisdiction. Provincial legislation that is, in pith and substance, directed towards these provincial matters may validly include GHG emissions mitigation measures. Federal statutes regulating the cumulative dimensions of 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 the federal power. Thus, Quebec's cap-and-trade legislation, as local industrial regulation, or British Columbia's carbon tax, as a direct tax on GHG emissions, will each remain valid and operable exercises of provincial jurisdiction. 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."

CR, Vols 1, 3, Tab 1, Moffet at paras 77, 78, 82, Exhibit T at 9-26; *Rogers Communications Inc. v. Châteauguay (City)*, 2016 SCC 23 at para 38, [2016] 1 SCR 467; *Marine Services International Ltd. v. Ryan Estate*, 2013 SCC 44 at para 50, [2013] 3 SCR 53; *General Motors of Canada Ltd. v. City National Leasing*, [1989] 1 SCR 641 at 669-70 **[*General Motors*]**; *Firearms Sequel* at paras 17-21; *Canadian Western Bank* at paras 54-75; *Spraytech* at paras 34, 35.

75. With respect to the *Act* itself, its backstop architecture precludes the possibility of conflict, while ensuring that carbon pricing meeting minimum national standards of stringency and scope applies throughout Canada. The *Act* supports existing provincial GHG emissions pricing schemes, and responds to provincial inaction. The possibility of provincial GHG emissions pricing schemes does not turn the matter of the cumulative dimensions of GHG emissions into a local matter.

76. Further, Parliament designed the *Act* to intrude minimally on facilities' operations. Rather than 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." The coordination between Parts 1 and 2 provides the necessary price signal in a manner well-tailored to particular industries. The *Act* prices GHG emissions to encourage behavioural change, but it does not tell facilities how they must operate, or how they must change their behaviour. The means by which facilities achieve GHG emissions reductions or otherwise respond to the increasing cost of GHG emissions remains entirely open to them. Regulations that require specific outcomes or use of particular technologies in specific sectors are less flexible and more intrusive. Recognizing federal jurisdiction to regulate the cumulative dimensions of GHG emissions does not shift the balance of legislative power, but rather provides Parliament with a flexible tool, reflecting the scale of the problem.

> *Imperial Oil Ltd. v. Quebec (Minister of the Environment)*, 2003 SCC 58 at para 23, [2003] 2 SCR 624; *Syncrude Canada* at paras 8-12, 20, 41-45, 77, 93, 101; *Hydro-Québec* at para 115-18; CR, Vol 1, Tab 1, Moffet at paras 102, 110-13, 117, 126-27.

77. Ontario's assertion that recognizing the cumulative dimensions of GHG emissions as a matter of national concern will allow Parliament to regulate "virtually every segment of the provincial economy and society" is exaggerated and inconsistent with what it acknowledges to

be the proper division of powers analysis. The pith and substance doctrine dictates that Parliament's jurisdiction over the cumulative dimensions of GHG emissions would only permit laws, like the *Act*, that have this matter as their dominant purpose. Parliament would not be empowered to pass laws that only tangentially relate to the cumulative dimensions of GHG emissions. The doctrine of colourability would ensure that federal legislation cannot take over areas of provincial jurisdiction under the pretext of purporting to legislate concerning the cumulative dimensions of GHG emissions.

Goodwin v. British Columbia (Superintendent of Motor Vehicles), 2015 SCC 46 at para 23, [2015] 3 SCR 250

B. The charges under the *Act* are valid regulatory charges tied to the scheme of the *Act*

78. "In the context of whether a government levy is a tax or a regulatory charge, it is the *primary purpose* of the law that is determinative". The character of a levy is determined by "its dominant or most important characteristic". If a levy is primarily imposed to raise revenue for general federal purposes then it will be a tax. If a levy is imposed primarily for a regulatory purpose, or as necessarily incidental to a broader regulatory scheme, it will be a regulatory charge. The fuel charge and the excess emissions charge imposed by the *Act* are valid regulatory charges because their dominant purpose is to modify behaviour.

620 Connaught Ltd. v. Canada (Attorney General), 2008 SCC 7 at paras 16, 17, 24 [2008] 1 SCR 131 [***620 Connaught***]; *Westbank First Nation v. British Columbia Hydro and Power Authority*, [1999] 3 SCR 134 at paras 30, 43 [***Westbank***]; *Re: Exported Natural Gas Tax*, [1982] 1 SCR 1004 at 1070 [***Exported Natural Gas***].

79. The parties agree that the *Act* creates a regulatory scheme. Contrary to Ontario's position, the requisite relationship between the charges and the scheme is also present. The charges are related to the scheme because they are the means by which Parliament seeks to achieve the regulatory purpose of the *Act* – to create incentives for the behavioural changes and

innovation necessary to reduce GHG emissions. Supreme Court jurisprudence confirms that "regulatory charges themselves may be the means of advancing a regulatory purpose." Where a charge is the regulatory mechanism, set to influence behaviour, there is no need for the use of the revenue it generates to be "tied to" the costs or purposes of the regulatory scheme for the requisite nexus between charge and scheme to exist. The nexus is inherent in the charge's regulatory purpose. Ontario's focus on the use of the charges' revenue is therefore misplaced.

Westbank at paras 29, 44; *620 Connaught* at paras 20, 27; *British Columbia (AG) v Canada (AG)* (1922), 64 SCR 377 [***Johnnie Walker***], aff'd [1923] 4 DLR 669 (JCPC); Ontario's Factum at paras 93, 105-6.

80. The test for determining whether a charge is connected to a regulatory scheme involves two steps: (1) determining whether a relevant regulatory scheme exists; and (2) establishing a relationship between the charge and the scheme.

620 Connaught at paras 16, 17; *Westbank* at paras 24, 30, 44.

i. Step 1: A relevant regulatory scheme exists

81. Ontario agrees that a regulatory scheme exists. A regulatory scheme will be found to exist where some or all of the following indicia are present: (1) a complete, complex, and detailed code of regulation; (2) a regulatory purpose which seeks to affect some behaviour; (3) the presence of actual or properly estimated costs of the regulation; and (4) a relationship between the person being regulated and the regulation, where the person being regulated either benefits from, or causes the need for, the regulation. Not all of these indicia need to be present to find that a regulatory scheme exists.

Westbank at para 44; *620 Connaught* at paras 24-28.

82. There is no dispute that the first, second, and fourth indicia are present. The carbon pricing system established by the *Act* and regulations constitute a complete, complex, and

detailed code of regulation for pricing GHG emissions. The charges are intended to create a financial incentive for businesses and individuals to change their behaviour in ways that will reduce cumulative GHG emissions and encourage innovation in low-emissions technologies. The need to regulate GHG emissions is caused by industry, by the producers and importers of GHG-emitting fuels, and by consumers. The excess emissions charge applies directly to industrial emitters. The fuel charge applies directly to fuel producers, importers, and distributors. While the fuel charge is not imposed directly on end-use consumers, it will likely be passed on to them, bringing them within the scope of the regulation.

> Ontario's Factum at para 93; CR, Vols 1-3, Tab 1, Moffet at paras 101-16, 123, 125, Exhibits R at 7, CC; *Act*, Preamble, paras 10-12; CR, Vol 4, Tab 3, Goodlet at paras 17-18, 24, and 26-29; CR, Vol 4, Tab 5, Rivers, Exhibit B at 4-14.

83. The third indicium is not relevant in this case. That there will be regulatory costs incurred in the operation of the federal scheme is self-evident. However, since the charges are not imposed to defray the costs of the scheme, but as the catalyst for behavioural change, focusing on actual or estimated regulatory costs does not assist in determining the existence of a regulatory scheme.

> *Westbank* at paras 24, 44; *620 Connaught* at para 20; *Canadian Association of Broadcasters v Canada*, 2008 FCA 157 at para 53 [***Canadian Broadcasters***].

ii. Step 2: A relationship exists between the charges and the regulatory scheme

84. As a valid regulatory regime exists, the second step is to determine if there is a relationship or nexus between the charges and the overall scheme. This relationship exists in either of two situations: where "the revenues are tied to the cost of the scheme", or where the charge itself has "a regulatory purpose of influencing the behaviour of the persons concerned." In *Westbank*, the Supreme Court explained that charges that "proscribe, prohibit, or lend preferences to certain conduct with the view of changing individual behaviour" are regulatory

charges. Ontario mischaracterizes the *Westbank* test in arguing that establishing the nexus also requires tying the use of the resulting revenue to the regulatory scheme. This requirement is not part of the nexus test for behaviour-changing regulatory charges.

Westbank at paras 29, 44; *620 Connaught* at paras 20, 27; *Canadian Broadcasters* at paras 44, 53; Ontario's Factum at paras 93, 105-6.

85. The charges in the *Act* are behaviour-changing regulatory charges. Significant evidence shows that pricing carbon pollution is an effective regulatory means to promote the behavioural changes and innovation needed to reduce GHG emissions throughout Canada. The convergent evidence that carbon pricing reduces emissions, the international consensus that carbon pricing is an essential measure to achieve the necessary global reductions in GHG emissions, the extensive work done by the Working Group, and the *Pan-Canadian Framework* are all important aspects of the background and circumstances surrounding the *Act*'s enactment. Parliament was fully informed of the evidence supporting the behaviour-changing efficacy of GHG emissions pricing when enacting the *Act*. The repeated references to the efficacy of economy-wide GHG emissions pricing as the most efficient way to encourage behavioural changes to reduce emissions – in the pan-Canadian approach to carbon pricing, in the Parliamentary legislative record, and in the preamble to the *Act* – all speak to how the fuel charge and excess emissions charge are linked to the regulatory objective. In short, the charges themselves have the regulatory purpose of influencing behaviour.

CR, Vol 4, Tab 5, Rivers at para 6, Exhibit B; CR, Vol 1, Tab 1, Moffet at paras 46-50, 56-70, 77-87; CR, Vol 4, Tab 3, Goodlet at paras 14-20; *Act*, Preamble, para 12; see paras 15, 21, 25, 32-33 above.

a. Jurisprudence does not require the use of revenues raised by a charge with a regulatory purpose to be tied to that purpose of the *Act*

86. Courts have specifically considered a charge with a regulatory purpose of influencing behaviour in only a few cases, but none has explicitly ruled on what use can be made of revenues generated by a charge with a regulatory purpose. Nonetheless, the *Johnnie Walker* case provides implicit guidance. In that case, British Columbia claimed the province was exempt from paying customs duties under s. 125 of the *Constitution Act, 1867*. While decided at a time when the jurisprudence on the characterization of a government charge was less evolved, the Supreme Court found that the federal customs duties in issue had elements of both taxation and regulation, with the regulatory element predominating. As described in *Westbank*, the Supreme Court in *Johnnie Walker* explained,

> ... that customs duties were the method of advancing the regulatory purpose of encouraging the importation of certain products, and discouraging the importation of others. Anglin J., at p. 387, explained that customs duties "are, it seems to me, something more" than simple taxation.
>
> *Westbank* at para 29; *Johnnie Walker* at 386.

87. The conclusion drawn from the *Johnnie Walker* case is that customs duties, because their *primary* purpose is the regulation of trade and commerce under s. 91(2) of the *Constitution Act, 1867*, are properly characterized as regulatory charges. Thus, the "fiscal immunity of the provincial Crown could not prevail". Neither *Johnnie Walker* nor any later case has stated that the use of revenues from customs duties cannot be used for general federal purposes (which they are) but must instead be dedicated exclusively to the regulatory purpose animating them.

Exported Natural Gas at 1069.

88. With respect to Ontario's suggestion that allowing the nexus requirement "to be met solely by *alleging* that the charge discourages undesirable behaviour" (emphasis changed)

would undermine s. 53 of the *Constitution Act, 1867*, Canada is not simply alleging that carbon pricing changes behaviour to reduce GHG emissions in the abstract. There is extensive evidence to support the regulatory purpose of the charges.

b. Requiring that revenues from behaviour changing charges be spent in furtherance of the *Act*'s regulatory purpose, as a pre-condition for the charges' validity as a regulatory charge, is an unwarranted constraint in the context of GHG emissions pricing

89. Requiring that the government spend the revenues from the charges under the *Act*, whose rates are set to create incentives for behavioural change, on the singular objective of reducing GHG emissions would be an unwarranted constraint. Parliament's overarching objective is to reduce GHG emissions, which Parliament is pursuing through GHG emissions pricing under the *Act*. Emissions pricing is a distinct approach from dedicated spending in furtherance of emissions reductions. Revenue generation is an effect of pricing GHG emissions, but not the reason for it. Since an escalating regulatory charge (to $50 per tonne of CO_2e by 2022) will have an increasingly effective impact on behaviour and on the reduction of GHG emissions, the utility of dedicating all the resulting revenues to the same end is not clear. Indeed, doing so could be economically inefficient, especially when there are already significant federal spending programs that support GHG emissions reductions. Conversely, economic efficiency is retained by maintaining fiscal flexibility to make spending decisions to address the impact of GHG emissions pricing, such as through the Climate Action Incentive payments.[6]

CR, Vol 1, Tab 1, Moffet at paras 129-136; CR, Vol 2, Tab 1, Exhibit P at 28-31, Exhibit R at 22, 26-30; CR, Vol 4, Tab 5, Rivers at para 8 and Exhibit C.

[6] Contrary to public discourse, microeconomic theory is conclusive that, for an average household, there is no reason to believe that receiving the Climate Action Incentive will undermine incentives to reduce GHG emissions: CR Vol 4, Tab 5, Rivers at para 8, Exhibit C.

90. For all of these reasons, it is neither necessary from a legal perspective, nor appropriate from an economic or fiscal perspective, for the revenues derived under the *Act* to be dedicated exclusively to GHG emissions reduction purposes. The requisite relationship between the charges imposed by the *Act* and its regulatory scheme exists by reason of the charges' regulatory purpose. They therefore satisfy the test as valid regulatory charges.

iii. As the charges are regulatory charges, s. 53 of the *Constitution Act, 1867* need not be considered

91. Section 53 of the *Constitution Act, 1867* mandates that bills for imposing any tax shall originate in the House of Commons, so it is only relevant if this Court finds that the *Act* imposes a tax. There is no authority for Ontario's assertion that the enactment of a regulatory charge is subject to s. 53. This Court held in *Eurig Estate* that s. 53 does not apply when the fees in question are not taxes. Because the charges under the *Act* are regulatory charges, not taxes, the requirements of s. 53 do not apply.

> *Eurig Estate (Re)*, [1998] 2 SCR 565 at para 8 [***Eurig Estate***]; *Eurig Estate (Re)* (1997), 31 OR (3d) 777 (ONCA) at para 80 (WL) citing *Reference re Agricultural Products Marketing*, [1978] 2 SCR 1198 at 1229.

C. If this Court finds that Part 1 of the *Act* imposes a tax, then it is validly enacted under s. 91(3) in a manner consistent with s. 53 of the *Constitution Act, 1867*

92. In the alternative, if this Court finds that the fuel charge is a tax rather than a regulatory charge, then Parliament has the legislative competence to enact it under Parliament's taxation power in s. 91(3) and has done so in accordance with s. 53 of the *Constitution Act, 1867*.

93. Contrary to Ontario's assertion, it is open to this court to find that the *Act* imposes a tax despite Canada's stated legislative objective. In *Eurig Estate*, Ontario imposed probate fees under the regulations to the *Administration of Justice Act*, which the Supreme Court found to be taxes. In *Westbank*, Westbank First Nation applied its assessment and taxation bylaws to BC

Hydro, which the Supreme Court found to be taxes. If the fuel charge is not a regulatory charge then it is a tax.

Ontario's Factum, paras 94-101; *Eurig Estate*; *Westbank*.

94. The Constitution confers the federal taxation power in the broadest of terms. Subsection 91(3) of the *Constitution Act, 1867* gives Parliament exclusive legislative authority in the matter of the "raising of money by any mode or system of taxation." Any potential intrusion of the *Act* into matters of provincial jurisdiction is, as described by the Supreme Court in *Canadian Western Bank*, "merely incidental" to Parliament's valid exercise of its taxation power.

Reference re: Goods and Services Tax, [1992] 2 SCR 445 at 468, 471; *Canadian Western Bank* at para 28.

95. Further, the *Act* complies with s. 53 of the Constitution. The *Act* originated in the House of Commons. On March 27, 2018, the Minister of Finance presented a Notice of Ways and Means Motion to the House of Commons, to implement certain provisions of the budget. The motion carried, and the Minister of Finance moved for leave to introduce Bill C-74, a budget implementation bill, Part 5 of which would later become the *Act*. There is no dispute that the House of Commons both debated the Bill and examined it in committee.

Debates (27 March 2018) at 18188-90; Audrey O'Brien & Marc Bosc, *House of Commons Procedure and Practice*, 2d ed (Ottawa: House of Commons, 2009) at 901-04 ("The Legislative Phase").

96. The fuel charge does not arise, even incidentally, in any delegated legislation. The fuel charge is imposed in the *Act*. The *Act* establishes who is subject to the charge in the jurisdictions where it operates. The charge is computed under the *Act* for time periods that are established by the *Act.* The amount of the charge is set by the *Act* and the Governor in Council's authority

to determine the rate is expressly delegated in s. 166(4). If the Court finds that the fuel charge is a tax, then it was validly enacted in accordance with s. 53 of the *Constitution Act, 1867*.

Act, ss 3 "rate", 17-41, 68, 69, 71, Schedule 2, column 5.

PART IV – STATEMENT OF ORDER SOUGHT

97. 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 respecting the cumulative dimensions of GHG emissions, being a matter of national concern.

98. In the alternative, Canada seeks the Court's opinion that Part 1 of the *Act* is validly enacted under Parliament's taxation power and Part 2 of the *Act* is validly enacted under Parliament's power to pass laws for the peace, order, and good government of Canada respecting the cumulative dimensions of GHG emissions, being a matter of national concern.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

February 08, 2019.

Sharlene Telles-Langdon

for **Brooke Sittler**

for **Mary Matthews**

Neil Goodridge

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

CANADA'S CERTIFICATE

1. An order under subrule 61.09(2) is not required.

2. The Attorney General of Canada estimates that 4 hours will be required for Canada's oral argument.

February 08, 2019.

Sharlene Telles-Langdon
Of Counsel for the Attorney General of Canada

SCHEDULE A – AUTHORITIES

	Cases	**Para(s)**
1	*114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town)*, 2001 SCC 40, [2001] 2 SCR 241	60, 74
2	*620 Connaught Ltd. v. Canada (Attorney General)*, 2008 SCC 7, [2008] 1 SCR 131	78, 79, 80, 81, 83, 84
3	*British Columbia v. Canadian Forest Products Ltd.*, 2004 SCC 38, [2004] 2 SCR 74	60
4	*British Columbia (AG) v. Canada (AG)* (1922), 64 SCR 377	79, 86, 87
5	*British Columbia (AG) v. Canada (AG)*, [1923] 4 DLR 669 (JCPC)	79
6	*Canada v. Société des alcools du Québec*, 2002 FCA 69	66
7	*Canada Metal Co. v. R* (1982), 144 DLR (3d) 124 (Man QB)	68
8	*Canadian Association of Broadcasters v. Canada*, 2008 FCA 157	83, 84
9	*Canadian Western Bank v. Alberta*, 2007 SCC 22, [2007] 2 SCR 3	73, 74, 94
10	*Eurig Estate (Re)*, [1998] 2 SCR 565	91, 93
11	*Eurig Estate (Re)* (1997), 31 OR (3d) 777 (ONCA)	91
12	*Friends of the Oldman River Society v. Canada (Minister of Transport)*, [1992] 1 SCR 3	60, 72
13	*General Motors of Canada Ltd. v. City National Leasing*, [1989] 1 SCR 641	74
14	*Goodwin v. British Columbia (Superintendent of Motor Vehicles)*, 2015 SCC 46 at para 23, [2015] 3 SCR 250	77
15	*Imperial Oil Ltd. v. Quebec (Minister of the Environment)*, 2003 SCC 58, [2003] 2 SCR 624	76
16	*Interprovincial Co-Operatives Ltd. et al. v. R*, [1976] 1 SCR 477	68, 72
17	*Katz Group Canada Inc. v. Ontario (Health and Long-Term Care)*, 2013 SCC 64, [2013] 3 SCR 810	66

	Cases	**Para(s)**
18	*Law Society of British Columbia v. Mangat*, 2001 SCC 67, [2001] 3 SCR 113	73
19	*Marine Services International Ltd. v. Ryan Estate*, 2013 SCC 44, [2013] 3 SCR 53.	74
20	*Ontario v. Canadian Pacific Ltd.*, [1995] 2 SCR 1031	60
21	*Ontario (AG) v. Canada (AG)*, [1896] UKPC 20 at 9, [1896] AC 348	51
22	*Ontario Hydro v. Ontario (LRB)*, [1993] 3 SCR 327	73
23	*Quebec (AG) v. Canada (AG)*, 2015 SCC 14, [2015] 1 SCR 693	54, 74
24	*R v. Crown Zellerbach Canada Ltd.*, [1988] 1 SCR 401	52, 61, 64, 68, 72
25	*R v. Hydro-Québec*, [1997] 3 SCR 213	60, 65, 66, 72, 76
26	*Re: Exported Natural Gas Tax*, [1982] 1 SCR 1004	78, 87
27	*Reference re Anti-Inflation Act*, [1976] 2 SCR 373	57
28	*Reference re: Firearms Act (Can.)*, 2000 SCC 31, [2000] 1 SCR 783	54, 55, 56
29	*Reference re Goods and Services Tax*, [1992] 2 SCR 445	94
30	*Reference re Pan-Canadian Securities Regulation*, 2018 SCC 48	54, 68, 73
31	*Reference re Securities Act*, 2011 SCC 66, [2011] 3 SCR 837	54, 55, 73
32	*Rogers Communications Inc. v. Châteauguay (City)*, 2016 SCC 23, [2016] 1 SCR 467	74
33	*Syncrude Canada Ltd. v. Canada (Attorney General)*, 2016 FCA 160	72, 76
34	Court of Appeal, The Hague, October 9, 2018, *Urgenda Foundation v. The State of the Netherlands*, Case Number: 200.178.245/01 (The Netherlands)	61

	Cases	**Para(s)**
35	*Westbank First Nation v. British Columbia Hydro and Power Authority*, [1999] 3 SCR 134	78, 79, 80, 81, 83, 84, 86, 93

	Secondary Sources	**Para(s)**
36	*House of Commons Debates*, 42nd Parl, 1st Sess (3 October 2016) at 5359, 5360, 5361	22
37	*House of Commons Debates*, 42nd Parl, 1st Sess (23 February 2017) at 9294, 9295	8, 9, 10
38	*House of Commons Debates*, 42nd Parl, 1st Sess (27 March 2018) at 18188, 18189, 18190	95
39	*House of Commons Debates,* 42nd Parl, 1st Sess (16 April 2018) at 18315	32
40	*House of Commons Debates,* 42nd Parl, 1st Sess (23 April 2018) at 18612, 18629	32
41	*House of Commons Debates*, 42nd Parl, 1st Sess (1 May 2018) at 18981, 18982, 18984	9, 10, 32, 33
42	*House of Commons Debates*, 42nd Parl, 1st Sess (8 May 2018) at 19235, 19236, 19238	9, 32, 33
43	*House of Commons Debates,* 42nd Parl, 1st Sess (30 May 2018) at 19972, 19973	33
44	*House of Commons Debates,* 42nd Parl, 1st Sess (31 May 2018) at 19985	32
45	House of Commons, Standing Committee on Finance, *Evidence*, 42nd Parl, 1st Sess, No 146 (25 April 2018) at 5, 6	32
46	House of Commons, Standing Committee on Finance, *Evidence*, 42nd Parl, 1st Sess, No 148 (1 May 2018) at 5, 6, 8	34
47	House of Commons, Standing Committee on Finance, *Evidence*, 42nd Parl, 1st Sess, No 151 (7 May 2018) at 1, 3	33
48	House of Commons, Standing Committee on Finance, *Evidence*, 42nd Parl, 1st Sess, No 152 (8 May 2018) at 7, 8	34

	Secondary Sources	**Para(s)**
49	House of Commons, Standing Committee on Finance, *Evidence*, 42nd Parl, 1st Sess, No 157 (23 May 2018) at 12, 13, 14	42
50	Senate, Standing Senate Committee on Agriculture and Forestry, 42nd Parl, 1st Sess, No 50 (1 May 2018) at 50:9, 50:10	32
51	Senate, Standing Senate Committee on Agriculture and Forestry, 42nd Parl, 1st Sess, No 52 (22 May 2018) at 52:34, 52:35	33
52	Senate, Standing Senate Committee on Energy, the Environment and Natural Resources, *Evidence*, 42nd Parl, 1st Sess, No 44 (1-3 May 2018) at 44:9, 44:10, 44:11, 44:14, 44:20, 44:21, 44:30, 44:31, 44:32, 44:65, 44:66, 44:67, 44:68	25, 32, 34, 39, 69
53	Senate, Standing Senate Committee on Energy, the Environment and Natural Resources, *Evidence*, 42nd Parl, 1st Sess, No 45 (10 May 2018) at 45:47, 45:62	33
54	Senate, Standing Senate Committee on Energy, the Environment and Natural Resources, *Evidence*, 42nd Parl, 1st Sess, No 46 (22 May 2018) at 46:7, 46:8	32, 33
55	Nathalie Chalifour, "Canadian Climate Federalism: Parliament's Ample Constitutional Authority to Legislate GHG Emissions" 2016 36 NJCL 331	64, 68, 73
56	Stewart Elgie, "Kyoto, the Constitution, and carbon trading: waking a sleeping BNA bear (or two)" (2007-08) 13:1 Rev. Const. Stud. 67	73
57	Morris J. Fish, "The Effect of Alcohol on the Canadian Constitution … Seriously" (2011) 57 McGill L. J. 189	73
58	James R. Fleming, *Historical Perspectives on Climate Change* (Oxford: Oxford University Press, 1998), ch. 6	59
59	Peter W. Hogg, *Constitutional Law of Canada*, loose-leaf, 5th ed (Toronto: Carswell, 2007)	72
60	Peter W. Hogg, "Constitutional Authority over Greenhouse Gas Emissions", (2009) 46:2 Alta. L. Rev. 507	73
61	Audrey O'Brien & Marc Bosc, *House of Commons Procedure and Practice*, 2d ed (Ottawa: House of Commons, 2009), ch. 18	95

	Secondary Sources	**Para(s)**
62	Spencer R. Weart, *The Discovery of Global Warming* (Cambridge, MA: Harvard University Press, 2008), ch. 1-2	59

SCHEDULE B

Tab	**Statutes**		**Para(s)**
B	*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	44

First Session, Forty-second Parliament,
64-65-66-67 Elizabeth II, 2015-2016-2017-2018

Première session, quarante-deuxième législature,
64-65-66-67 Elizabeth II, 2015-2016-2017-2018

STATUTES OF CANADA 2018

CHAPTER 27

A second Act to implement certain provisions of the budget tabled in Parliament on February 27, 2018 and other measures

ASSENTED TO

DECEMBER 13, 2018

BILL C-86

LOIS DU CANADA (2018)

CHAPITRE 27

Loi nº 2 portant exécution de certaines dispositions du budget déposé au Parlement le 27 février 2018 et mettant en œuvre d'autres mesures

SANCTIONNÉE

LE 13 DÉCEMBRE 2018

PROJET DE LOI C-86

(4) The portion of subsection 122.7(2) of the Act before the formula is replaced by the following:

Deemed payment on account of tax

(2) Subject to subsections (4) and (5), an eligible individual for a taxation year who files a return of income for the taxation year is deemed to have paid, at the end of the taxation year, on account of tax payable under this Part for the taxation year, an amount equal to the amount, if any, determined by the formula

(5) Subsection 122.7(5) of the Act is replaced by the following:

Only one eligible individual

(5) If an eligible individual has an eligible spouse for a taxation year and both those individuals would be, but for this subsection, eligible individuals for the purposes of subsection (2) in respect of the taxation year,

(a) if the individuals agree on which individual is the eligible individual for the taxation year, only that individual shall be an eligible individual for the purposes of subsection (2) in respect of the taxation year; and

(b) in any other case, only the individual that the Minister designates is the eligible individual for the purposes of subsection (2) in respect of the taxation year.

(6) Subsection 122.7(10) of the Act is replaced by the following:

Special rules for eligible dependant

(10) For the purpose of applying subsections (2) and (3), if an individual (referred to in this subsection as the "child") would be, but for this subsection, an eligible dependant of more than one eligible individual for a taxation year, the child is deemed only to be an eligible dependant of

(a) if the individuals agree, the agreed upon individual; and

(b) in any other case, the individual designated by the Minister.

(7) Subsections (1) to (6) come into force or are deemed to have come into force on January 1, 2019.

13 (1) The Act is amended by adding the following after section 122.71:

(4) Le passage du paragraphe 122.7(2) de la même loi précédant la formule est remplacé par ce qui suit :

Paiement réputé au titre de l'impôt

(2) Sous réserve des paragraphes (4) et (5), le particulier admissible pour une année d'imposition qui produit une déclaration de revenu pour l'année est réputé avoir payé, à la fin de l'année, au titre de son impôt à payer en vertu de la présente partie pour l'année, une somme égale à la somme positive obtenue par la formule suivante :

(5) Le paragraphe 122.7(5) de la même loi est remplacé par ce qui suit :

Un seul particulier admissible

(5) Dans le cas où un particulier admissible a un conjoint admissible pour une année d'imposition et où ils seraient tous deux, en l'absence du présent paragraphe, des particuliers admissibles pour l'application du paragraphe (2) pour l'année :

a) si les particuliers s'entendent sur celui d'entre eux qui est le particulier admissible pour l'année, seul celui convenu est le particulier admissible pour l'application du paragraphe (2) pour l'année;

b) sinon, seul celui que le ministre désigne est un particulier admissible pour l'application du paragraphe (2) pour l'année.

(6) Le paragraphe 122.7(10) de la même loi est remplacé par ce qui suit :

Règle spéciale — personne à charge admissible

(10) Pour l'application des paragraphes (2) et (3), dans le cas où un particulier (appelé « enfant » au présent paragraphe) serait, en l'absence du présent paragraphe, une personne à charge admissible de plus d'un particulier admissible pour une année d'imposition, l'enfant est réputé n'être une personne admissible que du particulier suivant :

a) si les particuliers s'entendent à cet égard, le particulier convenu;

b) sinon, le particulier que le ministre désigne.

(7) Les paragraphes (1) à (6) entrent en vigueur, ou sont réputés être entrés en vigueur, le 1er janvier 2019.

13 (1) La même loi est modifiée par adjonction, après l'article 122.71, de ce qui suit :

SUBDIVISION A.3

Climate Action Incentive

Definitions

122.8 (1) The following definitions apply in this section.

cohabiting spouse or common-law partner, of an individual at any time, has the same meaning as in section 122.6. (*époux ou conjoint de fait visé*)

eligible individual, for a taxation year, means an individual (other than a trust) who is, at the end of the taxation year,

(a) 18 years of age or older;

(b) a parent who resides with their child; or

(c) married or in a common-law partnership. (*particulier admissible*)

qualified dependant, of an individual for a taxation year, means a person who, at the end of the taxation year,

(a) is the individual's child or is dependent for support on the individual or on the individual's cohabiting spouse or common-law partner;

(b) resides with the individual;

(c) is under the age of 18 years;

(d) is not an eligible individual for the taxation year; and

(e) is not a qualified relation of any individual for the taxation year. (*personne à charge admissible*)

qualified relation, of an individual for a taxation year, means the person, if any, who, at the end of the taxation year, is the individual's cohabiting spouse or common-law partner. (*proche admissible*)

return of income, in respect of a person for a taxation year, means the person's return of income (other than a return of income under subsection 70(2) or 104(23), paragraph 128(2)(e) or subsection 150(4)) that is required to be filed for the taxation year or that would be required to be filed if the person had tax payable under this Part for the taxation year. (*déclaration de revenu*)

SOUS-SECTION A.3

Incitatif à agir pour le climat

Définitions

122.8 (1) Les définitions qui suivent s'appliquent au présent article.

déclaration de revenu En ce qui concerne une personne pour une année d'imposition, s'entend de la déclaration de revenu, sauf celle prévue aux paragraphes 70(2) ou 104(23), à l'alinéa 128(2)e) ou au paragraphe 150(4), qu'elle est tenue de produire ou qu'elle serait tenue de produire si elle avait un impôt payable en vertu de la présente partie pour l'année. (*return of income*)

époux ou conjoint de fait visé S'entend au sens de l'article 122.6. (*cohabiting spouse or common-law partner*)

particulier admissible Par rapport à une année d'imposition, particulier, à l'exception d'une fiducie, qui, à la fin de l'année, selon le cas :

a) a atteint l'âge de 18 ans;

b) réside avec un enfant dont il est le père ou la mère;

c) est marié ou vit en union de fait. (*eligible individual*)

personne à charge admissible Est une personne à charge admissible d'un particulier par rapport à une année d'imposition la personne qui, à la fin de l'année, répond aux conditions suivantes :

a) elle est l'enfant du particulier ou est à sa charge ou à la charge de l'époux ou conjoint de fait visé du particulier;

b) elle vit avec le particulier;

c) elle est âgée de moins de 18 ans;

d) elle n'est pas un particulier admissible par rapport à l'année d'imposition;

e) elle n'est pas le proche admissible d'un particulier par rapport à l'année d'imposition. (*qualified dependant*)

proche admissible Est un proche admissible d'un particulier par rapport à une année d'imposition la personne qui, à la fin de l'année, est l'époux ou conjoint de fait visé du particulier. (*qualified relation*)

Persons not eligible individuals, qualified relations or qualified dependants

(2) Notwithstanding subsection (1), a person is not an eligible individual, is not a qualified relation and is not a qualified dependant, for a taxation year, if the person

(a) died before April of the year following the taxation year;

(b) is confined to a prison or similar institution for a period of at least 90 days during the taxation year;

(c) is a non-resident person at any time in the taxation year;

(d) is a person described in paragraph 149(1)(a) or (b) at any time in the taxation year; or

(e) is a person in respect of whom a special allowance under the *Children's Special Allowances Act* is payable at any time in the taxation year.

Residence

(3) For the purposes of this section, an individual is considered to reside at any time only at their principal place of residence.

Deemed overpayment

(4) An eligible individual who files a return of income for a taxation year and who makes a claim under this subsection is deemed to have paid, at the end of the taxation year, on account of tax payable under this Part for the taxation year, an amount equal to the amount determined by the formula

(A + B + C × D) × E

where

A is the amount specified by the Minister of Finance for an eligible individual for the taxation year for the province (in this subsection and subsection (6) referred to as the "relevant province") in which the eligible individual resides at the end of the taxation year;

B is

(a) the amount specified by the Minister of Finance for a qualified relation for the taxation year for the relevant province, if

(i) the eligible individual has a qualified relation at the end of the taxation year, or

Personnes autres que particuliers admissibles, proches admissibles ou personnes à charge admissibles

(2) Malgré le paragraphe (1), n'est ni un particulier admissible, ni un proche admissible, ni une personne à charge admissible, par rapport à une année d'imposition, la personne qui, selon le cas,

a) est décédée avant le mois d'avril de l'année qui suit l'année d'imposition;

b) est détenue dans une prison ou dans un établissement semblable pendant une période d'au moins 90 jours au cours de l'année;

c) est une personne non-résidente à un moment donné au cours de l'année;

d) est, à un moment donné de l'année, une personne visée à l'alinéa 149(1)a) ou b);

e) est quelqu'un pour qui une allocation spéciale prévue par la *Loi sur les allocations spéciales pour enfants* est payable dans l'année.

Résidence

(3) Pour l'application du présent article, le particulier est considéré en tout temps ne résider qu'à son lieu principal de résidence.

Présomption de trop-payé

(4) Le particulier admissible qui produit une déclaration de revenu pour une année d'imposition et qui demande un remboursement en vertu du présent paragraphe est réputé avoir payé, à la fin de l'année, au titre de son impôt payable en vertu de la présente partie pour l'année, le montant obtenu par la formule suivante :

(A + B + C × D) × E

où :

A représente le montant fixé par le ministre des Finances à l'égard d'un particulier admissible par rapport à l'année d'imposition relativement à la province (appelée « province visée » au présent paragraphe et au paragraphe (6)) où réside le particulier admissible à la fin de l'année d'imposition;

B :

a) le montant fixé par le ministre des Finances à l'égard d'un proche admissible par rapport à l'année d'imposition relativement à la province visée, si :

(i) le particulier admissible a un proche admissible à la fin de l'année d'imposition,

(ii) subparagraph (i) does not apply and the eligible individual has a qualified dependant at the end of the taxation year, and

(b) in any other case, nil;

C is the amount specified by the Minister of Finance for a qualified dependant for the taxation year for the relevant province;

D is the number of qualified dependants of the eligible individual at the end of the taxation year, other than a qualified dependant in respect of whom an amount is included because of subparagraph (a)(ii) of the description of B for the taxation year; and

E is

(a) 1.1, if there is a census metropolitan area, as determined in the last census published by Statistics Canada before the taxation year, in the relevant province and the individual does not reside in a census metropolitan area at the end of the taxation year, and

(b) 1, in any other case.

(ii) le sous-alinéa (i) ne s'applique pas et le particulier admissible a une personne à charge admissible à la fin de l'année d'imposition,

b) dans les autres cas, zéro;

C le montant fixé par le ministre des Finances à l'égard d'une personne à charge admissible par rapport à l'année d'imposition relativement à la province visée;

D le nombre de personnes à charge admissibles du particulier admissible à la fin de l'année d'imposition, sauf une personne à charge admissible à l'égard de laquelle un montant est inclus par l'effet du sous-alinéa a)(ii) de l'élément B pour l'année d'imposition;

E :

a) si la province visée compte une région métropolitaine de recensement, selon le dernier recensement publié par Statistique Canada avant l'année d'imposition, et que le particulier ne réside pas dans une telle région à la fin de l'année d'imposition, 1,1,

b) sinon, 1.

Authority to specify amounts

(5) The Minister of Finance may specify amounts for a province for a taxation year for the purposes of this section. If the Minister of Finance does not specify a particular amount that is relevant for the purposes of this section, that particular amount is deemed to be nil for the purpose of applying this section.

Deemed rebate in respect of fuel charges

(6) The amount deemed by this section to have been paid on account of tax payable for a taxation year is deemed to have been paid in the year following the taxation year as a rebate in respect of charges levied under Part 1 of the *Greenhouse Gas Pollution Pricing Act* in respect of the relevant province.

Only one eligible individual

(7) If an individual is a qualified relation of another individual for a taxation year and both those individuals would be, but for this subsection, eligible individuals for the taxation year, only the individual that the Minister designates is the eligible individual for the taxation year.

Exception — qualified dependant

(8) If a person would, if this Act were read without reference to this subsection, be the qualified dependant of two or more individuals, for a taxation year,

Montants fixés par le ministre

(5) Le ministre des Finances peut fixer des montants relativement à une province par rapport à une année d'imposition pour l'application du présent article. S'il ne fixe pas un montant particulier se rapportant à l'application du présent article, ce montant est réputé être zéro pour l'application du présent article.

Présomption de remboursement — redevances sur les combustibles

(6) Le montant qui est réputé, par le présent article, avoir été payé au titre de l'impôt payable pour une année d'imposition est réputé être un remboursement effectué relativement aux redevances prélevées en vertu de la partie 1 de la *Loi sur la tarification de la pollution causée par les gaz à effet de serre* à l'égard de la province visée au cours de l'année qui suit l'année d'imposition.

Un seul particulier admissible

(7) Dans le cas où un particulier est le proche admissible d'un autre particulier par rapport à une année d'imposition et où les deux particuliers seraient, en l'absence du présent paragraphe, des particuliers admissibles par rapport à cette année, seul le particulier désigné par le ministre est le particulier admissible par rapport à l'année.

Personne à charge admissible d'un seul particulier

(8) La personne qui, en l'absence du présent paragraphe, serait la personne à charge admissible de plusieurs particuliers par rapport à une année d'imposition est réputée

(a) the person is deemed to be a qualified dependant, for the taxation year, of the one of those individuals on whom those individuals agree; and

(b) in any other case, the person is deemed to be, for the taxation year, a qualified dependant only of the individual that the Minister designates.

(a) soit de celui parmi ces particuliers sur lequel ceux-ci se sont mis d'accord;

b) soit, dans les autres cas, de nul autre que le particulier désigné par le ministre.

Effect of bankruptcy

(9) For the purposes of this section, if an individual becomes bankrupt in a particular calendar year, notwithstanding subsection 128(2), any reference to the taxation year of the individual (other than in this subsection) is deemed to be a reference to the particular calendar year.

Effet de la faillite

(9) Pour l'application du présent article, dans le cas où un particulier devient un failli au cours d'une année civile, malgré le paragraphe 128(2), toute mention (sauf au présent paragraphe) de l'année d'imposition du particulier vaut mention de l'année civile en cause.

(2) Subsection (1) applies to the 2018 and subsequent taxation years.

(2) Le paragraphe (1) s'applique aux années d'imposition 2018 et suivantes.

14 (1) Section 128.1 of the Act is amended by adding the following after subsection (1.1):

14 (1) L'article 128.1 de la même loi est modifié par adjonction, après le paragraphe (1.1), de ce qui suit :

Trusts and partnerships look-through rule

(1.2) For the purposes of this subsection and paragraph (1)(c.1), if at any time shares of the capital stock of a corporation resident in Canada are owned by a trust or a partnership (each referred to in this subsection as a "conduit"), each person or partnership with an interest as a beneficiary under the conduit or that is a member of the conduit (each referred to in this subsection as a "holder"), as the case may be, is deemed to own the shares of each class of the capital stock of the corporation that are owned by the conduit the number of which is determined by the formula

A × B/C

where

A is the total number of shares of the class of the capital stock of the corporation that is owned by the conduit at that time;

B is the fair market value, at that time, of the holder's interest in the conduit; and

C is the total fair market value, at that time, of all interests in the conduit.

Fiducies et sociétés de personnes — règle de transparence

(1.2) Pour l'application du présent paragraphe et de l'alinéa (1)c.1), dans le cas où, à un moment donné, des actions du capital-actions d'une société résidant au Canada appartiennent à une fiducie ou à une société de personnes (cette fiducie ou cette société de personnes étant appelée « intermédiaire » au présent paragraphe), chaque personne ou société de personnes qui détient une participation à titre de bénéficiaire de l'intermédiaire ou qui est un associé de l'intermédiaire (cette personne ou cette société de personnes étant appelée « détenteur » au présent paragraphe), selon le cas, est réputée être propriétaire des actions de chaque catégorie du capital-actions de la société qui appartiennent à l'intermédiaire, dont le nombre est déterminé par la formule suivante :

A × B/C

où :

A représente le nombre total d'actions de la catégorie du capital-actions de la société qui appartiennent à l'intermédiaire à ce moment;

B la juste valeur marchande, à ce moment, de la participation du détenteur dans l'intermédiaire;

C la juste valeur marchande totale, à ce moment, de l'ensemble des participations dans l'intermédiaire.

(2) Subsection (1) applies in respect of transactions or events that occur after February 26, 2018.

(2) Le paragraphe (1) s'applique relativement aux opérations et événements qui se produisent après le 26 février 2018.

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

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