Court of Appeal File No.: C65807
(M49919, M49949, M49950, M49957, M49961, M49963, M49965, M49966, M49968, M49970, M49971, M49972, M49974)

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

FACTUM OF THE ATTORNEY GENERAL OF ONTARIO

(Motions for Leave to Intervene Returnable January 15, 2019)

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PART I – OVERVIEW

1. This reference concerns whether the *Greenhouse Gas Pollution Pricing Act*, SC 2018, c. 12, s. 186 (the "Act") is *ultra vires* Parliament.

2. Thirteen parties have sought leave to intervene in this reference. Ontario consents to the motions for leave to intervene of the Canadian Taxpayers Federation and the United Conservative Association of Alberta. It does not oppose the motions for leave to intervene of the Assembly of First Nations; the Canadian Environmental Law Association, Environmental Defence, and the Sisters of Providence of St. Vincent de Paul (collectively the "Canadian Environmental Law Association"); the David Suzuki Foundation; and the United Chief and Councils of Mnidoo Mnising.

3. Ontario submits that the other motions for leave to intervene should be dismissed as the proposed interveners seek to expand the scope of the reference, raise irrelevant issues that go to the policy wisdom or efficacy of the Act rather than its validity, or duplicate arguments which Canada is already making.

4. If any interveners are granted leave to intervene, Ontario submits that they should be required to take the record as they find it and should be denied leave to file additional evidence. This Court has already ordered that only Attorneys General may seek leave to file evidence. The evidence the proposed interveners seek to lead is irrelevant, inadmissible hearsay, or inadmissible opinion evidence from witnesses who are not qualified, independent experts.

5. Finally, Ontario submits that this Court should fix clear terms and conditions on any parties granted leave to intervene as set out below to ensure this Court's time is used effectively and the parties are not prejudiced.

PART II – FACTS

6. By Order in Council 1014/2018, the Lieutenant Governor in Council referred to this Court under section 8 of the *Courts of Justice Act* the following question:

> Is the *Greenhouse Gas Pollution Pricing Act*, Part 5 of the *Budget Implementation Act, 2018, No. 1*, SC 2018, c.12, unconstitutional in whole or in part?

Ontario, Order in Council 1014/2018, Ontario's Motion Record, Tab 1, pp. 1-3

7. On August 30, 2018, Justice MacPherson issued an Order setting out the procedure for the reference. The Attorney General of Canada was ordered to be a party to the reference and provincial and territorial Attorneys General were given the right to intervene if they so chose. Saskatchewan, British Columbia, and New Brunswick have exercised that right.

> Order of Justice MacPherson dated August 30, 2018, paras. 1 and 4, Ontario's Motion Record, Tab 2, pp. 5-6

8. The Court ordered that any other party seeking leave to intervene had to seek leave to intervene. Thirteen proposed interveners have done so.

> Order of Justice MacPherson dated August 30, 2018, para. 6, Ontario's Motion Record, Tab 2, p. 6

9. The Court granted Ontario and Canada the right to file evidence on the reference. It also permitted other Attorneys General to seek leave to do so by motion (only British Columbia has sought to do so). Consistent with the usual rule that interveners must take the record as they find it, the Court did not contemplate any other potential intervener seeking leave to file evidence.

> Order of Justice MacPherson dated August 30, 2018, paras. 5, 7, 10, 12, and 13, Ontario's Motion Record, Tab 2, pp. 6-7

PART III – ISSUES AND LAW

10. The issues on this motion are:

1. Whether some or all of the proposed interveners should be granted leave to intervene;
2. Whether those proposed interveners that seek leave to file evidence should be permitted to do so;
3. What, if any, terms and conditions should be imposed on parties granted leave to intervene.

11. Ontario consents to the motions for leave to intervene of the Canadian Taxpayers Federation and the United Conservative Association of Alberta. It does not oppose the motions for leave to intervene of the Assembly of First Nations, the Canadian Environmental Law Association, the David Suzuki Foundation, and the United Chief and Councils of Mnidoo Mnising if they are able to demonstrate to the Court that they meet the test for intervention. Ontario opposes the other motions for leave to intervene as they seek to expand the scope of this reference beyond the issue before the Court – whether the *Greenhouse Gas Pollution Pricing Act* is *intra vires* Parliament's powers under section 91 of the *Constitution Act, 1867*.

12. Ontario submits that none of the proposed interveners should be granted leave to file evidence. The Order of Justice MacPherson made it clear that only Ontario, Canada, and those Attorneys General granted leave are allowed to file evidence on this reference. Other parties seeking leave to intervene should, as is the usual rule, take the record as they find it and not raise new issues.

13. Interveners should not raise new issues. As Justice MacPherson has already ordered, they are limited to ten (10) page facta. They should be granted no more than twenty (20) minutes of oral argument each. Interveners raising similar issues should, as discussed below, be required to file a joint factum and share time for oral argument. Depending on the number of parties granted leave to intervene, Ontario reserves the right to request a longer reply factum.

A. The Test for Leave to Intervene

14. The test for leave to intervene as a friend of court was set out in *Peel* and reaffirmed by this Court in *Bedford*:

> the matters to be considered are the nature of the case, the issues which arise and the likelihood of the applicant being able to make a useful contribution to the resolution of the appeal without causing injustice to the immediate parties.
>
> *Peel (Regional Municipality) v. Great Atlantic & Pacific Co. of Canada Ltd* (1990), 74 OR (2d) 164 at para. 10 (CA)
>
> *Bedford v. Canada (Attorney General)*, 2011 ONCA 209 at para. 8
>
> *Rules of Civil Procedure*, RRO 1990, Reg 194, Rules 13.02 and 13.03(2)

15. A public interest group that is granted leave to intervene as a friend of the court usually fulfils at least one of the following criteria:

1. the intervener has a real, substantial, and identifiable interest in the subject matter of the proceedings;
2. the intervener has an important perspective distinct from the immediate parties;
3. the intervener is a well-recognized group with a special expertise and with a broad identifiable membership base.

Bedford v. Canada (Attorney General), 2009 ONCA 669 at para. 2

P.S. v Ontario, 2014 ONCA 160 at para. 6

16. Nevertheless, the mere fact that a public interest group satisfies one or more of these criteria does not entitle it to intervene. As Justice Nordheimer (as he then was) noted in *Trinity Western University*, even a well-recognized group with special expertise must nonetheless demonstrate that it will make a useful and distinct contribution.

Trinity Western University v Law Society of Upper Canada, 2014 ONSC 5541 at paras. 6-7

17. An intervener's contribution must be distinct from that of the parties. Leave to intervene should not be granted where intervention would not add significantly to the position of existing parties representing similar viewpoints and interests:

Stadium Corp of Ontario Ltd v. Toronto, [1992] OJ No 1574 (Div Ct) at paras. 14-15, rev'd on other grounds, [1993] OJ No 738 (CA):

> Proposed interveners must be able to offer something more than the repetition of another party's argument or a slightly different emphasis on arguments squarely addressed by the parties. The fact that the intervenors are prepared to make a somewhat more sweeping constitutional argument does not mean they will be able to add or contribute to the resolution of the legal issues between the parties.

Jones v. Tsige (2011), 106 OR (3d) 721 at para. 29 (CA)

18. Where there are multiple applicants for leave to intervene, the Court should seek to establish some balance between those which favour the applicant and those which favour the respondent.

Trinity Western University v Law Society of Upper Canada, 2014 ONSC 5541 at para. 10

Toronto Star v. Attorney General of Ontario, 2017 ONSC 7525 at para. 17:

> I am concerned that the list of intervenors is somewhat lopsided against

> the Applicant. They will be compelled to respond to intervenors' factums whose arguments may be repetitive but whose factual scenarios will be sufficiently different that counsel for the Applicant will not be in a position to let them go unanswered.

19. Interveners are not permitted to enlarge the issues in a case or to raise new issues that were not raised in the case.

> *Tsleil-Waututh Nation v. Canada (Attorney General)*, 2017 FCA 174 at paras. 54-56:
>
> An intervener cannot introduce new issues or claim relief that an applicant has not sought. Instead, an intervener is limited to addressing the issues already raised in the proceedings, *i.e.*, within the scope of the notices of application. As well, an intervener cannot introduce new evidence. See generally *Canada (Citizenship and Immigration) v. Ishaq*, 2015 FCA 151 (CanLII), [2016] 1 F.C.R. 686.
>
> In this Court, interveners are guests at a table already set with the food already out on the table. Interveners can comment from their perspective on what they see, smell and taste. They cannot otherwise add food to the table in any way.
>
> To allow them to do more is to alter the proceedings that those directly affected – the applicants and the respondents – have cast and litigated under for months, with every potential for procedural and substantive unfairness.
>
> *Canada (Attorney General) v. Canadian Doctors for Refugee Care*, 2015 FCA 34 at para. 19:
>
> Existing parties build their evidence and submissions around those carefully defined issues. An outsider seeking admission to the proceedings as an intervener has to take those issues as it finds them, not transform them or add to them. … [A] proposed intervener must show its potential contribution to the advancement of the issues on the table, not how it will change the issues on the table.
>
> *Bedford v. Canada (Attorney General)*, 2011 ONCA 209 at para. 16:
>
> To state the obvious, the moving party is not a party to the litigation. The parties have framed the issues and developed the record as they thought best. The respondents did not include a challenge to the legislation on the basis of s. 15. I am satisfied that it would do a disservice to the parties, to the court and, indeed, the public interest to litigate a s. 15 challenge on the basis of this record.

20. In the reference context, the same principles apply. By necessity, the Order in Council commencing a reference is stated at a high level of generality. It is therefore necessary to look at the facta filed by the primary parties – in this case, Ontario and Canada – to determine what the live issues are in the reference. Interveners should not be permitted to raise new issues, particularly issues that would require substantial additional fact finding for which the reference procedure is ill-suited.

21. Although Canada has not yet filed its factum in this reference, it has filed its factum in the parallel Saskatchewan reference challenging the same federal legislation. It can reasonably be assumed that Canada will make the same or similar arguments in support of the Act's validity in this reference.

> Factum of the Attorney General of Canada in *Re Greenhouse Gas Pollution Pricing Act* (SK CA), Ontario's Motion Record, Tab 4, pp. 63-122

22. This reference is not about whether climate change is an important issue that needs to be addressed. As Ontario states in its factum:

> Ontario agrees with Canada that climate change is real and that human activities are a major cause. Ontario also acknowledges that climate change is already having a disruptive effect across Canada, and that, left unchecked, its potential impact will be even more severe. Ontario agrees that proactive action to address climate change is required.
>
> Ontario's Factum, para. 6, Ontario's Motion Record, Tab 3, p. 16

23. Nor is this reference about the efficaciousness or policy desirability of the carbon pricing regime the Act would impose. As the Supreme Court has repeatedly made clear, division of power cases are solely about legislative competence, not policy:

> Efficaciousness is not a relevant consideration in a division of powers analysis. … Canada must identify a federal aspect distinct from that on which the provincial legislation is grounded. The courts do not have the power to declare legislation constitutional simply because they conclude it may be the best option from the point of view of policy. The test is not

> which jurisdiction – federal or provincial – is thought to be best placed to legislate regarding the matter in question. The inquiry into constitutional powers under ss. 91 and 92 of the *Constitution Act, 1867* focuses on legislative competence, not policy.
>
> Ontario's Factum, para. 76, Ontario's Motion Record, Tab 3, p. 41
>
> *Reference re Securities Act*, 2011 SCC 66 at para. 90, [2011] 3 SCR 837
>
> *Reference re Pan-Canadian Securities Regulation*, 2018 SCC 48 at para. 82

24. Both Ontario and Canada's arguments are confined to whether the Act is a valid exercise of Parliament's powers under section 91 of the *Constitution Act, 1867*. In particular, Canada relies on the national concern branch of the peace, order, and good government power in the Preamble to section 91 and the taxation power in section 91(3). Ontario argues that neither of these powers nor the other heads of power enumerated in section 91 can support the Act's validity – Parliament does not have plenary power to regulate greenhouse gas emissions. A proposed intervention must confine itself to those issues.

> Factum of the Attorney General of Canada in *Re Greenhouse Gas Pollution Pricing Act* (SK CA), Ontario's Motion Record, Tab 4, pp. 63-122
>
> Ontario's Factum, Ontario's Motion Record, Tab 3, pp. 11-61

B. The Motions for Leave to Intervene of Parties Who Seek to Expand the Scope of this Reference, Raise Irrelevant Arguments, or Duplicate Arguments Raised by Canada Should Be Dismissed

25. For the reasons set out below, Ontario opposes the motions for leave to intervene by the parties who seek to expand the issues before this Court.

(1) Athabasca Chipewyan First Nation

26. The Athabasca Chipewyan First Nation seeks to raise a number of issues which are irrelevant to whether Canada has jurisdiction to enact the Act, would expand the

scope of this reference, or require extensive fact-finding. Its motion for leave to intervene should be denied.

27. This reference is about whether Parliament or the provincial legislatures have jurisdiction to regulate greenhouse gases. The degree to which the rights of the Athabasca Chipewyan First Nation are adversely affected by climate change, while an important issue, is not relevant to this issue.

Factum of the Athabasca Chipewyan First Nation, paras. 3 and 5-6

28. Section 35 of the *Constitution Act, 1982*, the aboriginal and treaty rights it protects, the duty to consult to which it gives rise, and the Honour of the Crown which it recognizes all bind both the federal and provincial governments acting within their respective spheres of jurisdiction. They do not, however, determine ***which*** level of government has jurisdiction to regulate greenhouse gas emissions.

Factum of the Athabasca Chipewyan First Nation, paras. 12-15

Constitution Act, 1982, s. 35, Schedule B to the *Canada Act, 1982* (UK), 1982, c. 11

29. The validity of Ontario's climate change plan is not at issue in this reference. In any event, Ontario is still consulting on its climate change plan (part of its Environment Plan) with the public and interested parties. Further consultations would occur as different aspects of the plan are finalized and implemented. To suggest that Ontario has already "violated the honour of the Crown" by failing to consult with First Nations is premature, unsupported by any facts in evidence on this reference, and irrelevant to the question on this reference.

Factum of the Athabasca Chipewyan First Nation, para. 14

Ontario's Factum, paras. 11 and 22, Ontario's Motion Record, Tab 3, pp. 17 and 21-22

(2) Canada's Ecofiscal Commission

30. Canada's Ecofiscal Commission's proposed intervention focuses on its view that a national carbon price is the preferable economic instrument for reducing greenhouse gas emissions. As discussed above, whether the carbon pricing regime the Act purports to impose is an efficacious or preferable policy approach to reducing greenhouse gas emissions is not before this Court.

Factum of Canada's Ecofiscal Commission, paras. 11-12

31. Nor should Canada's Ecofiscal Commission be permitted to intervene to attempt to overturn the *Labour Conventions* case. International treaties the federal ***Executive*** has signed cannot amend the constitutional division of powers. As discussed above, only a constitutional amendment passed by Parliament and sufficient provincial ***Legislatures*** could give Parliament the power to implement treaty obligations that would otherwise fall within provincial jurisdiction. In any event, the *Labour Conventions* case is a Privy Council decision which is binding on this Court. None of the Supreme Court's recent jurisprudence suggest that *Labour Conventions* should be reconsidered. On the contrary, the Supreme Court recently reaffirmed it.

Factum of Canada's Ecofiscal Commission, paras. 14-19

Canada (A.G.) v. Ontario (A.G.) ("Labour Conventions"), [1937] AC 326 (PC)

Pan-Canadian Securities Reference, supra at para. 66

Constitution Act, 1982, supra, s. 38

(3) The Canadian Public Health Association

32. The Canadian Public Health Association's proposed intervention focuses on the harms climate change will cause to public health. As noted above, however, the fact that climate change may have serious adverse impacts on the public is not in dispute. This

reference is solely about jurisdiction to address those potential harms, not whether they exist. The degree to which climate change will have an adverse impact on public health, while an important matter of public policy, is not relevant to which level of government has jurisdiction.

Factum of the Canadian Public Health Association, paras. 5 and 11

33. In any event, to the degree the submissions the Canadian Public Health Association proposes to make are relevant to the scope of the national concern doctrine, they duplicate those Canada has already made in its factum in the Saskatchewan reference and which it will likely make in this reference. Canada has already relied on the public health impacts of climate change as a reason why it should have jurisdiction under the national concern doctrine to regulate greenhouse gases. There is no need to permit the Canadian Public Health Association to intervene to make the same arguments itself.

Factum of the Attorney General of Canada in *Re Greenhouse Gas Pollution Pricing Act* (SK CA), paras. 12, 75, and 86

34. Finally, the arguments the Canadian Public Health Association intends to make regarding the criminal law power are unnecessary. Ontario does not contest that protecting public health is a valid object of the criminal law power; rather, it argues that "the detailed regulatory measures set out in the Act go far beyond the types of prohibition and penalty that can be imposed under the criminal law power."

Factum of the Canadian Public Health Association, para. 12

Ontario's Factum, para. 54, Ontario's Motion Record, Tab 3, pp. 31-32

(4) Équiterre

35. Équiterre and le Centre québécois du droit de l'environnement (collectively "Équiterre") should be denied leave to intervene as their submissions do not add anything to those Canada has already made in its factum in the Saskatchewan reference. Canada has already argued in detail why it believes greenhouse gases are a distinct subject matter that can be distinguished from pollution or the environment more generally. Similarly, Canada has already made detailed submissions on why it believes the provinces are unable to effectively regulate greenhouse gases and why it believes giving Parliament jurisdiction over greenhouse gases would not upset the constitutional balance. There is no need to permit Équiterre to intervene to make the same arguments itself.

Factum of Équiterre, paras. 5-9

Factum of the Attorney General of Canada in *Re Greenhouse Gas Pollution Pricing Act* (SK CA), paras. 88-103, Ontario's Motion Record, Tab 4, pp. 96-102

(5) Greg Vezina

36. Greg Vezina has not demonstrated that he meets any of the branches of the *Bedford* test for intervention. He has not demonstrated that he has a real, substantial, and identifiable interest in the outcome of the reference beyond his personal interest in the subject matter and a career in alternative energy. He has not demonstrated that he has an important perspective distinct from that of Ontario and Canada. And he is a private individual, not a well-recognized group with a special expertise and a broad identifiable membership base.

Factum of Greg Vezina, paras. 2-4

Bedford v. Canada (Attorney General), 2009 ONCA 669 at para. 2

37. In fact, it is not clear from Mr. Vezina's motion materials whether he wishes to argue that the Act is *intra vires* or *ultra vires* Parliament. He states that Ontario and Canada do not deal adequately with the criminal law and trade and commerce powers but does not set out what his position on those powers would be. In his Notice of Motion, however, he puts forward different arguments, stating that his proposed intervention would address whether the Act is *intra vires* Parliament on the basis that it either (a) infringes the *Charter of Rights and Freedoms* in some unspecified manner; or (b) confers statutory discretion which must be limited in some unspecified way, again without setting out what his position would be.

Factum of Greg Vezina, para. 11

Notice of Motion, Motion Record of Greg Vezina, Tab 1, pp. 2-3

38. Mr. Vezina has not met his burden of showing that he would be "able to make a useful contribution to the resolution of the appeal without causing injustice to the immediate parties." His motion for leave to intervene should therefore be dismissed.

Bedford v. Canada (Attorney General), 2011 ONCA 209 at para. 8

(6) The Intergenerational Climate Coalition (Generation Squeeze *et al.*)

39. The Intergenerational Climate Coalition (Generation Squeeze *et al.*)'s proposed intervention focuses on the disproportionate impacts it believes climate change will have on young Canadians and future generations. As noted above, however, the fact that climate change may have serious adverse impacts in the future is not in dispute.

Factum of the Intergenerational Climate Coalition, paras. 15 and 17

40. The degree to which climate change will have an adverse impact on young Canadians and future generations, while an important matter of public policy, is not relevant to which level of government has jurisdiction. As discussed above, the policy

wisdom and efficaciousness of the various measures Parliament and the provincial legislatures enact within their respective spheres of jurisdiction to combat climate change are not before this Court.

41. Nor should the Intergenerational Climate Coalition be granted leave to intervene to make submissions concerning the unwritten constitutional principle of the protection of minorities. That principle reflects the constitutional obligations both levels of government have to avoid discrimination against minorities in exercising their powers. It does not, however, assist in determining ***which*** level of government has jurisdiction to regulate greenhouse gas emissions.

Factum of the Intergenerational Climate Coalition, paras. 18-19

(7) The International Emissions Trading Association

42. The International Emissions Trading Association should not be permitted to intervene in this reference. The focus of its proposed intervention appears to be on whether there is any conflict between the Act and Ontario's "announced industrial emissions carbon pricing regimes" and on how any such conflict should be resolved. Given that Ontario is still consulting on its environment plan (which includes its climate change plan), including how Ontario plans to regulate industrial greenhouse gas emissions, any such analysis is premature. Moreover, it is not the issue before the Court on this reference which deals solely with the validity of the Act, not whether it conflicts with any current or future Ontario legislation. The International Emissions Trading Association's proposed submissions are therefore not relevant to the determination of this reference.

Factum of the International Emissions Trading Association, para. 8

C. The Motions to File Evidence Should Be Dismissed

43. This Court has already determined that only intervening Attorneys General, not other groups granted leave to intervene, should be permitted to seek to file additional evidence. That ruling was consistent with the caselaw discussed at paragraphs 14 to 19 above establishing that interveners must take the record as they find it. The Court should not revisit that Order now.

> Order of Justice MacPherson dated August 30, 2018, paras. 5, 7, 10, 12, and 13

44. Even if it were appropriate to consider permitting non-Attorney General interveners to seek leave to file evidence, the proposed interveners should not be permitted to do so. The evidence they seek to lead is irrelevant, inadmissible hearsay, or opinion evidence put forward by witnesses who are not qualified, independent experts.

> *R. v. Spence*, 2005 SCC 71 at paras. 68-69, [2005] 3 SCR 71
>
> *White Burgess Langille Inman v. Abbott and Haliburton Co.*, 2015 SCC 23 at paras. 14-54, [2015] 2 SCR 182
>
> *Bruff-Murphy (Litigation guardian of) v. Gunawardena*, 2017 ONCA 502 at paras. 33-39, leave to appeal to SCC refused [2017] SCCA No. 343
>
> *R. v. Davey*, 2010 ONCA 818 at paras. 11-17, aff'd on other grounds 2012 SCC 75, [2012] 3 SCR 828
>
> *R. v. Sheriffe*, 2015 ONCA 880 at paras. 101-06, leave to appeal to SCC refused [2016] SCCA No. 514

(1) Athabasca Chipewyan First Nation

45. The Athabasca Chipewyan First Nation seeks leave to rely on the Affidavit of Lisa Tssessaze at the hearing of this reference.

> Affidavit of Lisa Tssessaze, Motion Record of the Athabasca Chipewyan First Nation, Tab 2

46. Ms. Tssessaze does not purport to be a biologist, hydrologist, climatologist, transportation engineer, environmental scientist, economist, or any other kind of expert

witness. Nor does she purport to be independent from the Athabasca Chipewyan First Nation. On the contrary, she is a member of the Athabasca Chipewyan First Nation and director of its Dené Lands and Resource Management office.

47. Despite not being an independent, qualified expert, Ms. Tssessaze purports to put forward opinion evidence on, among other matters, what changes will occur in Canada's climate by 2080 and the impact of such changes on the caribou populations, ice roads, and the water quality and biodiversity of the Peace River Delta on which the Athabasca Chipewyan First Nation depends. She also purports to lead evidence on whether Ontario will be able to reduce its greenhouse gas emissions without imposing a carbon tax on Ontario families and industries.

48. Even if this evidence were relevant to the question of whether Parliament has jurisdiction to enact the Act (which for the reasons set out above it is not), Ms. Tssessaze is not a qualified, independent expert witness entitled to adduce opinion evidence about the impact greenhouse gas emissions will have on the Athabasca Chipewyan First Nation in the future. Nor is she permitted to rely on the various hearsay reports she attaches to her affidavit for the truth of their contents. The Athabasca Chipewyan First Nation's motion to rely on Ms. Tssessaze's evidence should therefore be dismissed.

(2) Canada's Ecofiscal Commission

49. Canada's Ecofiscal Commission seeks leave to rely on the affidavit of Christopher Ragan at the hearing of this reference.

> Affidavit of Christopher Ragan, Motion Record of Canada's Ecofiscal Commission, Tab 2

50. Even if Mr. Ragan could be qualified as an expert in economics, he is the Chair of Canada's Ecofiscal Commission. As such, he is not sufficiently independent to tender expert opinion evidence on behalf of Canada's Ecofiscal Commission.

51. In any event, the evidence Mr. Ragan seeks to put forward is irrelevant to the issue before this Court – whether the Act is *intra vires* Parliament. The reports attached to his affidavit all deal with the policy wisdom and efficaciousness of carbon pricing mechanisms compared to other regulatory approaches to reducing greenhouse gas emissions. As discussed above, choosing which policy instruments are preferable and how those policy instruments should best be designed and implemented are matters for elected legislatures and governments, not the Courts.

(3) The Canadian Public Health Association

52. The Canadian Public Health Association seeks leave to rely on the affidavit of Ian Culbert at the hearing of this reference.

> Affidavit of Ian Culbert, Motion Record of the Canadian Public Health Association, Tab 2

53. Mr. Culbert does not purport to be a physician, epidemiologist, statistician, climatologist, hydrologist, environmental scientist, or any other kind of expert witness. Nor does he purport to be independent from the Canadian Public Health Association. On the contrary, he is its Executive Director.

54. Despite not being an independent, qualified expert, Mr. Culbert purports to put forward opinion evidence on, among other matters, the rate at which Canada's climate will change and the impact those changes will have on public health including the incidence of disease, water pollution, food security, wildfires, floods, destruction of infrastructure, and population displacement.

55. Even if this evidence were relevant to the question of whether Parliament has jurisdiction to enact the Act (which for the reasons set out above it is not), Mr. Culbert is not a qualified, independent expert witness entitled to adduce opinion evidence about the impact greenhouse gas emissions will have on public health in the future. Nor is he permitted to rely on the various hearsay reports he attaches to his affidavit for the truth of their contents. The Canadian Public Health Association's motion to rely on Mr. Culbert's evidence should therefore be dismissed.

(4) Greg Vezina

56. Mr. Vezina asks for permission to submit unspecified further evidence in his Factum. His affidavit makes reference to "dozens of studys [*sic*] and references to thousands of pages of research we have completed" which appear to deal with the efforts of Mr. Vezina's company to develop alternative fuels. It also attaches various federal government reports and newspaper articles. None of these materials appear to be relevant to the question of whether the Act is *intra vires* Parliament. Mr. Vezina's motion to submit further evidence should be dismissed.

Affidavit of Greg Vezina, Motion Record of Greg Vezina, Tab 2

(5) Intergenerational Climate Commission (Generation Squeeze, *et al.*)

57. The Intergenerational Climate Commission (Generation Squeeze, *et al.*) seeks leave to rely on the affidavit of Dr. Paul Kershaw at the hearing of this reference.

Affidavit of Dr. Paul Kershaw, Motion Record of the Intergenerational Climate Commission (Generation Squeeze, *et al.*), Tab 2

58. Dr. Kershaw does not purport to have any expertise in the causes or impacts of climate change or the efficacy of carbon pricing as a tool to reduce greenhouse gas emissions. As such, he is not entitled to put forward opinion evidence on those topics.

Nor is he permitted to rely on the various hearsay reports he attaches to his affidavit for the truth of their contents.

59. Even if Dr. Kershaw could be qualified as an expert in the intergenerational fairness of public finance decisions, he is the founder of Generation Squeeze, one of the Intergenerational Climate Commission's constituent organizations. As such, he is not sufficiently independent to tender expert opinion evidence on behalf of the Intergenerational Climate Commission.

60. In any event, the evidence Dr. Kershaw seeks to put forward is irrelevant to the issue before this Court – whether the Act is *intra vires* Parliament. The degree to which Canadian governments' policy choices favour older Canadians at the expense of younger Canadians and future generations is a matter for political debate, not legal determination. So too is the policy wisdom and efficacy of carbon pricing. The Intergenerational Climate Commission's motion to rely on Dr. Kershaw's evidence should therefore be dismissed.

(6) The International Emissions Trading Association

61. The International Emissions Trading Association states in its Notice of Motion that it "intends to take the record as filed, including this Motion Record, and does not intend to file further evidence." Counsel has recently advised that the Association does wish to rely on the affidavit of Kathleen Eleanor Sullivan filed as part of that Motion Record at the hearing of this reference.

> Notice of Motion, para. (a)(ix), Motion Record of the International Emissions Trading Association, Tab 1
>
> Affidavit of Kathleen Eleanor Sullivan, Motion Record of the International Emissions Trading Association, Tab 2

62. Ms. Sullivan does not purport to be independent from the International Emissions Trading Association. On the contrary, she is its Managing Director. Ms. Sullivan also does not purport to have any expertise in the causes or impacts of climate change or the efficacy of carbon pricing as a tool to reduce greenhouse gas emissions. As such, she is not entitled to put forward opinion evidence on those topics. Nor is she permitted to rely on the hearsay report she attaches to her affidavit for the truth of its contents. The International Emissions Trading Association's motion to rely on Ms. Sullivan's evidence should therefore be dismissed.

(7) The United Chiefs and Councils of Mnidoo Mnising

63. The United Chiefs and Councils of Mnidoo Mnising seeks leave to rely on the affidavit of Chief Patsy Corbiere at the hearing of this reference.

> Affidavit of Chief Patsy Corbiere, Motion Record of the United Chiefs and Councils of Mnidoo Mnising, Tab 2

64. Chief Corbiere's evidence speaks to the impact climate change has had and may have in the future on the United Chiefs and Councils of Mnidoo Mnising. As discussed above, the degree to which the United Chiefs and Councils of Mnidoo Mnising is adversely affected by climate change, while an important matter of public policy, is not relevant to which level of government has jurisdiction to regulate greenhouse gases. Nor is Chief Corbiere a qualified, independent expert witness entitled to adduce opinion evidence about the impact greenhouse gas emissions will have on the United Chiefs and Councils of Mnidoo Mnising in the future. The United Chiefs and Councils of Mnidoo Mnising's motion to rely on Chief Corbiere's evidence should therefore be dismissed.

D. The Terms and Conditions That Should Be Imposed if Leave to Intervene Is Granted

65. If leave to intervene is granted to the proposed interveners, Ontario submits that terms and conditions should be imposed to ensure their interventions do not prejudice the parties to the reference.

66. As discussed above, interveners should not be permitted to raise new issues not raised by Ontario or Canada. This should be made an express term of any order granting leave to intervene.

67. To avoid undue repetition, interveners raising similar issues should be required to file a joint factum and share time for oral argument. In particular, Ontario submits that the following interveners raise similar issues and should be treated as one group of interveners: (1) the Assembly of First Nations, the Athabasca Chipewyan First Nation, and the United Chiefs and Councils of Mnidoo Mnising; (2) the Canadian Public Health Association and the Intergenerational Climate Commission (Generation Squeeze, *et al*.).

68. Justice MacPherson has already ordered that non-Attorney General interveners should be permitted to file a ten (10) page factum by February 27, 2019. No intervener has asked for any different factum length or filing deadline.

Order of Justice MacPherson dated August 30, 2018, para. 13

69. Ontario submits that non-Attorney General interveners or groups of interveners should each be granted twenty (20) minutes of oral argument.

70. Depending on the number of parties granted leave to intervene, Ontario reserves the right to request a longer reply factum than the twenty (20) pages Justice MacPherson has already granted. Ontario may need a longer reply factum than Canada

as Ontario will have to reply to both Canada and the majority of the interveners (as eleven of the thirteen proposed interveners propose to support Canada's position).

Order of Justice MacPherson dated August 30, 2018, para. 15

PART IV – ORDER REQUESTED

71. Ontario requests an Order granting the motions for leave to intervene of the Canadian Taxpayers Federation and the United Conservative Association of Alberta. It does not oppose the motions for leave to intervene of the Assembly of First Nations, the Canadian Environmental Law Association, the David Suzuki Foundation, and the United Chiefs and Councils of Mnidoo Mnising. Ontario requests that the other motions for leave to intervene be denied.

72. If some or all of the motions for leave to intervene are granted, Ontario requests the following terms and conditions:

a) No intervener shall be allowed to raise new issues beyond those raised by Ontario and Canada in their facta;

b) Interveners raising similar issues shall be required to file a joint factum and share time for oral argument;

c) Interveners or groups of interveners shall each be permitted to file a ten (10) page facta; and

d) Interveners or groups of interveners shall each be granted no more than twenty (20) minutes of oral argument.

73. Depending on the number of parties granted leave to intervene, Ontario reserves the right to request a longer reply factum.

74. Ontario estimates that it will require one (1) hour of oral argument.

ALL OF WHICH IS RESPECTFULLY SUBMITTED, THIS 8TH DAY OF JANUARY, 2019

Josh Hunter | Padraic Ryan | Thomas Lipton

SCHEDULE A – AUTHORITIES CITED

1. *Peel (Regional Municipality) v. Great Atlantic & Pacific Co. of Canada Ltd* (1990), 74 OR (2d) 164 (CA)

2. *Bedford v. Canada (Attorney General)*, 2011 ONCA 209

3. *Bedford v. Canada (Attorney General)*, 2009 ONCA 669

4. *P.S. v Ontario*, 2014 ONCA 160

5. *Trinity Western University v Law Society of Upper Canada*, 2014 ONSC 5541

6. *Stadium Corp of Ontario Ltd v. Toronto*, [1992] OJ No 1574 (Div Ct), rev'd on other grounds, [1993] OJ No 738 (CA)

7. *Jones v. Tsige* (2011), 106 OR (3d) 721 (CA)

8. *Toronto Star v. Attorney General of Ontario*, 2017 ONSC 7525

9. *Tsleil-Waututh Nation v. Canada (Attorney General)*, 2017 FCA 174

10. *Canada (Citizenship and Immigration) v. Ishaq*, 2015 FCA 151, [2016] 1 F.C.R. 686

11. *Canada (Attorney General) v. Canadian Doctors for Refugee Care*, 2015 FCA 34

12. *Reference re Securities Act*, 2011 SCC 66, [2011] 3 SCR 837

13. *Reference re Pan-Canadian Securities Regulation*, 2018 SCC 48

14. *Canada (A.G.) v. Ontario (A.G.) ("Labour Conventions")*, [1937] AC 326 (PC)

15. *R. v. Spence*, 2005 SCC 71 at paras. 68-69, [2005] 3 SCR 71

16. *White Burgess Langille Inman v. Abbott and Haliburton Co.*, 2015 SCC 23 at paras. 14-54, [2015] 2 SCR 182

17. *Bruff-Murphy (Litigation guardian of) v. Gunawardena*, 2017 ONCA 502 at paras. 33-39, leave to appeal to SCC refused [2017] SCCA No. 343

18. *R. v. Davey*, 2010 ONCA 818 at paras. 11-17, aff'd on other grounds 2012 SCC 75, [2012] 3 SCR 828

19. *R. v. Sheriffe*, 2015 ONCA 880 at paras. 101-06, leave to appeal to SCC refused [2016] SCCA No. 514

SCHEDULE B – LEGISLATION CITED

1. *Rules of Civil Procedure*, RRO 1990, Reg 194, Rules 13.02 and 13.03(2)

2. *Constitution Act, 1982*, ss. 35 and 38, Schedule B to the *Canada Act, 1982* (UK), 1982, c. 11

Français

Courts of Justice Act

R.R.O. 1990, REGULATION 194
RULES OF CIVIL PROCEDURE

Consolidation Period: From January 1, 2019 to the e-Laws currency date.

Last amendment: 537/18.

Legislative History: 219/91, 396/91, 73/92, 175/92, 535/92, 770/92, 212/93, 465/93, 466/93, 766/93, 351/94, 484/94, 739/94, 740/94, 69/95, 70/95, 377/95, 533/95, 534/95, 60/96, 61/96, 175/96, 332/96, 333/96, 536/96, 554/96, 555/96, 118/97, 348/97, 427/97, 442/97, 171/98, 214/98, 217/98, 292/98, 452/98, 453/98, 570/98, 627/98, 288/99, 290/99, 292/99, 484/99, 488/99, 583/99, 24/00, 25/00, 504/00, 652/00, 653/00, 654/00, 113/01, 243/01, 244/01, 284/01, 427/01, 447/01, 457/01, 206/02, 308/02, 336/02, 19/03, 54/03, 263/03, 419/03, 14/04, 131/04, 132/04, 219/04, 42/05, 168/05, 198/05, 260/05, 77/06, 8/07, 573/07, 575/07, 55/08, 438/08, 394/09, 453/09, 186/10, 436/10, 55/12, 399/12, 231/13, 43/14, 170/14, CTR 16 MR 10 - 1, CTR 16 MR 10 - 2, 259/14, 193/15, 147/16, 281/16, 487/16, 82/17, 203/17, CTR 25 JL 17 - 1, 2, 584/17, CTR 06 JL 18 - 1, 536/18, 537/18.

This is the English version of a bilingual regulation.

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REFERENCES

12.06 (1) Leave to appeal to the Divisional Court under subsection 30 (2), (9), (10) or (11) of the Act shall be obtained from a judge other than the judge who made the order. O. Reg. 465/93, s. 2 (3).

Motion in Writing

(1.1) The motion for leave to appeal shall be heard in writing, without the attendance of parties or lawyers. O. Reg. 82/17, s. 2 (1).

Certification Order — Grounds

(2) Leave to appeal from an order under subsection 30 (2) of the Act shall be granted only on the grounds provided in subrule 62.02 (4) with necessary modifications. O. Reg. 465/93, s. 2 (3); O. Reg. 82/17, s. 2 (2).

Order Awarding $3,000 or less or Dismissing Claim — Grounds

(3) Leave to appeal from an order under subsection 30 (9), (10) or (11) of the Act shall not be granted unless,

(a) there has been a miscarriage of justice; or

(b) the order may be used as a precedent in determining the rights of other class members or the defendant in the proceeding under section 24 or 25 of the Act and there is good reason to doubt the correctness of the order. O. Reg. 465/93, s. 2 (3).

Procedure

(4) Subrules 61.03.1 (2) to (19) apply, with the following and any other necessary modifications, to the motion for leave to appeal:

1. References in those subrules to the Court of Appeal shall be read as references to the Divisional Court.
2. For the purposes of subrule 61.03.1 (6), only one copy of each of the motion record, factum, any transcripts and any book of authorities is required to be filed.
3. For the purposes of subrule 61.03.1 (10), only one copy of each of the factum, any motion record and any book of authorities is required to be filed. O. Reg. 82/17, s. 2 (3).

Subsequent Procedure if Leave Granted

(5) If leave is granted, the notice of appeal required by rule 61.04, together with the appellant's certificate respecting evidence required by subrule 61.05 (1), shall be delivered within seven days after the granting of leave, and from then on Rule 61 applies to the appeal. O. Reg. 82/17, s. 2 (3).

PROCEEDING AGAINST REPRESENTATIVE DEFENDANT

12.07 Where numerous persons have the same interest, one or more of them may defend a proceeding on behalf or for the benefit of all, or may be authorized by the court to do so. O. Reg. 465/93, s. 2 (3).

PROCEEDING BY UNINCORPORATED ASSOCIATION OR TRADE UNION

12.08 Where numerous persons are members of an unincorporated association or trade union and a proceeding under the *Class Proceedings Act, 1992* would be an unduly expensive or inconvenient means for determining their claims, one or more of them may be authorized by the court to bring a proceeding on behalf of or for the benefit of all. O. Reg. 288/99, s. 9.

RULE 13 INTERVENTION

LEAVE TO INTERVENE AS ADDED PARTY

13.01 (1) A person who is not a party to a proceeding may move for leave to intervene as an added party if the person claims,

(a) an interest in the subject matter of the proceeding;

(b) that the person may be adversely affected by a judgment in the proceeding; or

(c) that there exists between the person and one or more of the parties to the proceeding a question of law or fact in common with one or more of the questions in issue in the proceeding. R.R.O. 1990, Reg. 194, r. 13.01 (1).

(2) On the motion, the court shall consider whether the intervention will unduly delay or prejudice the determination of the rights of the parties to the proceeding and the court may add the person as a party to the proceeding and may make such order as is just. R.R.O. 1990, Reg. 194, r. 13.01 (2).

LEAVE TO INTERVENE AS FRIEND OF THE COURT

13.02 Any person may, with leave of a judge or at the invitation of the presiding judge or master, and without becoming a party to the proceeding, intervene as a friend of the court for the purpose of rendering assistance to the court by way of argument. R.R.O. 1990, Reg. 194, r. 13.02; O. Reg. 186/10, s. 1.

LEAVE TO INTERVENE IN DIVISIONAL COURT OR COURT OF APPEAL

13.03 (1) Leave to intervene in the Divisional Court as an added party or as a friend of the court may be granted by a panel of the court, the Chief Justice or Associate Chief Justice of the Superior Court of Justice or a judge designated by either of them. R.R.O. 1990, Reg. 194, r. 13.03 (1); O. Reg. 292/99, s. 4; O. Reg. 186/10, s. 2; O. Reg. 82/17, s. 16.

(2) Leave to intervene as an added party or as a friend of the court in the Court of Appeal may be granted by a panel of the court, the Chief Justice or Associate Chief Justice of Ontario or a judge designated by either of them. R.R.O. 1990, Reg. 194, r. 13.03 (2); O. Reg. 186/10, s. 2; O. Reg. 55/12, s. 1; O. Reg. 82/17, s. 16.

COMMENCEMENT OF PROCEEDINGS

RULE 13.1 PLACE OF COMMENCEMENT AND HEARING OR TRIAL

PLACE OF COMMENCEMENT

Statute or Rule Governing Place of Commencement, Trial or Hearing

13.1.01 (1) If a statute or rule requires a proceeding to be commenced, brought, tried or heard in a particular county, the proceeding shall be commenced at a court office in that county and the county shall be named in the originating process. O. Reg. 14/04, s. 10.

Choice of Place

(2) If subrule (1) does not apply, the proceeding may be commenced at any court office in any county named in the originating process. O. Reg. 14/04, s. 10.

Mortgage Claims

(3) In the case of an originating process, whether it is brought under Rule 64 (Mortgage Actions) or otherwise, that contains a claim relating to a mortgage, including a claim for payment of a mortgage debt or for possession of a mortgaged property, the proceeding shall be commenced in the county that the regional senior judge of a region in which the property is located, in whole or in part, designates within that region for such claims. O. Reg. 259/14, s. 4.

TRANSFER

Motion to Transfer to Another County

13.1.02 (1) If subrule 13.1.01 (1) applies to a proceeding but a plaintiff or applicant commences it in another place, the court may, on its own initiative or on any party's motion, order that the proceeding be transferred to the county where it should have been commenced. O. Reg. 14/04, s. 10.

(2) If subrule (1) does not apply, the court may, on any party's motion, make an order to transfer the proceeding to a county other than the one where it was commenced, if the court is satisfied,

(a) that it is likely that a fair hearing cannot be held in the county where the proceeding was commenced; or

(b) that a transfer is desirable in the interest of justice, having regard to,

(i) where a substantial part of the events or omissions that gave rise to the claim occurred,

(ii) where a substantial part of the damages were sustained,

(iii) where the subject-matter of the proceeding is or was located,

(iv) any local community's interest in the subject-matter of the proceeding,

(v) the convenience of the parties, the witnesses and the court,

(vi) whether there are counterclaims, crossclaims, or third or subsequent party claims,

(vii) any advantages or disadvantages of a particular place with respect to securing the just, most expeditious and least expensive determination of the proceeding on its merits,

(viii) whether judges and court facilities are available at the other county, and

(ix) any other relevant matter. O. Reg. 14/04, s. 10.

(3) If an order has previously been made under subrule (2), any party may make a further motion, and in that case subrule (2) applies with necessary modifications. O. Reg. 14/04, s. 10.

(3.1) Despite subrules 37.03 (1) and 76.05 (2) (place of hearing motions), a motion under subrule (1), (2) or (3) may be brought and heard in the county to which the transfer of the proceeding is sought. O. Reg. 438/08, s. 10.

Transfer on Initiative of Regional Senior Judge

(4) If subrule (1) does not apply, the regional senior judge in whose region the proceeding was commenced may, on his or her own initiative and subject to subrules (5) and (6), make an order to transfer the proceeding to another county in the same region. O. Reg. 14/04, s. 10.

CONSTITUTION ACT, 1982 [80]

PART I

CANADIAN CHARTER OF RIGHTS AND FREEDOMS

Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law:

Guarantee of Rights and Freedoms

Rights and freedoms in Canada

1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Fundamental Freedoms

Fundamental freedoms

2. Everyone has the following fundamental freedoms:

(*a*) freedom of conscience and religion;

(*b*) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;

(*c*) freedom of peaceful assembly; and

(*d*) freedom of association.

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[80] Enacted as Schedule B to the *Canada Act 1982*, 1982, c. 11 (U.K.), which came into force on April 17, 1982. The *Canada Act 1982*, other than Schedules A and B thereto, reads as follows:

An Act to give effect to a request by the Senate and House of Commons of Canada

Whereas Canada has requested and consented to the enactment of an Act of the Parliament of the United Kingdom to give effect to the provisions hereinafter set forth and the Senate and the House of Commons of Canada in Parliament assembled have submitted an address to Her Majesty requesting that Her Majesty may graciously be pleased to cause a Bill to be laid before the Parliament of the United Kingdom for that purpose.

Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The *Constitution Act, 1982* set out in Schedule B to this Act is hereby enacted for and shall have the force of law in Canada and shall come into force as provided in that Act.

2. No Act of the Parliament of the United Kingdom passed after the *Constitution Act, 1982* comes into force shall extend to Canada as part of its law.

3. So far as it is not contained in Schedule B, the French version of this Act is set out in Schedule A to this Act and has the same authority in Canada as the English version thereof.

4. This Act may be cited as the *Canada Act 1982*.

CITATION

Citation

34. This Part may be cited as the *Canadian Charter of Rights and Freedoms*.

PART II

RIGHTS OF THE ABORIGINAL PEOPLES OF CANADA

Recognition of existing aboriginal and treaty rights

35. (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

Definition of "aboriginal peoples of Canada"

(2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.

Land claims agreements

(3) For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired.

Aboriginal and treaty rights are guaranteed equally to both sexes

(4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons. **(96)**

Commitment to participation in constitutional conference

35.1 The government of Canada and the provincial governments are committed to the principle that, before any amendment is made to Class 24 of section 91 of the "*Constitution Act, 1867*", to section 25 of this Act or to this Part,

(*a*) a constitutional conference that includes in its agenda an item relating to the proposed amendment, composed of the Prime Minister of Canada and the first ministers of the provinces, will be convened by the Prime Minister of Canada; and

(*b*) the Prime Minister of Canada will invite representatives of the aboriginal peoples of Canada to participate in the discussions on that item. **(97)**

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(96) Subsections 35(3) and (4) were added by the *Constitution Amendment Proclamation, 1983* (*see* SI/84-102).

(97) Section 35.1 was added by the *Constitution Amendment Proclamation, 1983* (*see* SI/84-102).

PART IV.I

CONSTITUTIONAL CONFERENCES

37.1 Repealed. [100]

PART V

PROCEDURE FOR AMENDING CONSTITUTION OF CANADA [101]

General procedure for amending Constitution of Canada

38. (1) An amendment to the Constitution of Canada may be made by proclamation issued by the Governor General under the Great Seal of Canada where so authorized by

(*a*) resolutions of the Senate and House of Commons; and

(*b*) resolutions of the legislative assemblies of at least two-thirds of the provinces that have, in the aggregate, according to the then latest general census, at least fifty per cent of the population of all the provinces.

Majority of members

(2) An amendment made under subsection (1) that derogates from the legislative powers, the proprietary rights or any other rights or privileges of the legislature or government of a province shall require a resolution supported by a majority of the

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[100] Part IV.1 (section 37.1), which was added by the *Constitution Amendment Proclamation, 1983* (*see* SI/84-102), was repealed on April 18, 1987 by section 54.1 of the *Constitution Act, 1982*. Section 37.1 read as follows:

37.1 (1) In addition to the conference convened in March 1983, at least two constitutional conferences composed of the Prime Minister of Canada and the first ministers of the provinces shall be convened by the Prime Minister of Canada, the first within three years after April 17, 1982 and the second within five years after that date.

(2) Each conference convened under subsection (1) shall have included in its agenda constitutional matters that directly affect the aboriginal peoples of Canada, and the Prime Minister of Canada shall invite representatives of those peoples to participate in the discussions on those matters.

(3) The Prime Minister of Canada shall invite elected representatives of the governments of the Yukon Territory and the Northwest Territories to participate in the discussions on any item on the agenda of a conference convened under subsection (1) that, in the opinion of the Prime Minister, directly affects the Yukon Territory and the Northwest Territories.

(4) Nothing in this section shall be construed so as to derogate from subsection 35(1).

[101] Prior to the enactment of Part V, certain provisions of the Constitution of Canada and the provincial constitutions could be amended pursuant to the *Constitution Act, 1867*. See footnotes (44) and (48) to section 91, Class 1 and section 92, Class 1 of that Act, respectively. Other amendments to the Constitution could only be made by enactment of the Parliament of the United Kingdom.

members of each of the Senate, the House of Commons and the legislative assemblies required under subsection (1).

Expression of dissent

(3) An amendment referred to in subsection (2) shall not have effect in a province the legislative assembly of which has expressed its dissent thereto by resolution supported by a majority of its members prior to the issue of the proclamation to which the amendment relates unless that legislative assembly, subsequently, by resolution supported by a majority of its members, revokes its dissent and authorizes the amendment.

Revocation of dissent

(4) A resolution of dissent made for the purposes of subsection (3) may be revoked at any time before or after the issue of the proclamation to which it relates.

Restriction on proclamation

39. (1) A proclamation shall not be issued under subsection 38(1) before the expiration of one year from the adoption of the resolution initiating the amendment procedure thereunder, unless the legislative assembly of each province has previously adopted a resolution of assent or dissent.

Idem

(2) A proclamation shall not be issued under subsection 38(1) after the expiration of three years from the adoption of the resolution initiating the amendment procedure thereunder.

Compensation

40. Where an amendment is made under subsection 38(1) that transfers provincial legislative powers relating to education or other cultural matters from provincial legislatures to Parliament, Canada shall provide reasonable compensation to any province to which the amendment does not apply.

Amendment by unanimous consent

41. An amendment to the Constitution of Canada in relation to the following matters may be made by proclamation issued by the Governor General under the Great Seal of Canada only where authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province:

(*a*) the office of the Queen, the Governor General and the Lieutenant Governor of a province;

(*b*) the right of a province to a number of members in the House of Commons not less than the number of Senators by which the province is entitled to be represented at the time this Part comes into force;

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 (M49919, M49949, M49950, M49957, M49961, M49963, M49965, M49966, M49968, M49970, M49971, M49972, M49974)

COURT OF APPEAL FOR ONTARIO

Proceedings commenced at Toronto

FACTUM OF THE ATTORNEY GENERAL OF ONTARIO

(Motions for Leave to Intervene Returnable January 15, 2019)

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