

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

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Proposed Intervener

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PART I - NATURE OF THE MOTION

1. Pursuant to Rules 13.02 and 13.03(2) of the *Rules of Civil Procedure*, the proposed intervener seeks leave to intervene as a friend of the court for the purpose of rendering assistance to the court by way of argument in the within Reference in respect of the issue whether the *Greenhouse Gas Pollution Pricing Act*, SC 2018, c. 12 (“Act”) is *intra vires* the Parliament of Canada.

Motion Record (“MR”), Tab 1: Notice of Motion, pages 1-5.

PART II – FACTS

2. The proposed intervener is an expert in the production and use of energy (a) has developed varying technologies and completed extensive life cycle analysis amongst multiple approaches to achieving environmental protection goals and producing cleaner lower cost energy; (b) has broad interest, experience, and expertise, in climate change issues; (c) has appeared as a presenting expert at multiple scientific conferences with the research presented having been published in peer reviewed scientific journals or by the AIChE; (d) has appeared before Parliamentary and legislative standing committees on the issue and others; (e) has co-authored many articles, reports and submissions to the Federal and Provincial governments and their regulatory agencies across Canada; and/or (f) possesses a long record of involvement in important public matters of serious public concern, including being accepted as an intervener in regulatory matters and at the Supreme Court of Canada Reference Re: Bill 30, An Act to Amend the Education Act (Ont.), [1987] 1 S.C.R. 1148.

MR, Tab 2: GV Aff, paras 2(a)-(f), 3-14 and Exhibits “A” to “L”.

4. The proposed intervenor possess almost forty years of experience in the energy sector including areas of the life cycle environmental impact, and developing related scientific, energy and economic policy. His perspectives on the legal issues in the Reference are unique, broader, and materially different from those represented by the Parties. The submissions of the proposed ntervener will assist the Court, not duplicate those of the Parties, nor cause undue delay or injustice to the Parties.

MR, Tab 2: GV Aff, paras 2(a)-(f), 3-14 and Exhibits “A” to “L”.

PART III - ISSUES AND LAW

Issue: Whether this Honourable Court should grant leave to the proposed Intervenor to intervene as a friend of the court for the purpose of rendering assistance to the court by way of argument in the within Reference?

A. Rule 13 Intervention Authority

5. The Court may grant leave to any person to intervene as a friend of the court for the purpose of rendering assistance to the court by way of argument.

IF, Sch. B: Rule 13.02, *Rules of Civil Procedure*.

6. Leave to intervene in the Court of Appeal as a friend of the court 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.

IF, Sch. B: Rule 13.03(2), *Rules of Civil Procedure*.

B. Factors to be Considered

7. There is greater latitude (or a lower threshold) for intervention in public interest cases than in private interest cases. Where applicants for leave to intervene have no direct interest in the outcome of a matter, an intervention will still be permitted where they have an interest in the

public law issues involved and are able to make a useful contribution to the resolution of those issues, without injustice to the immediate parties.

Intervenors' Book of Authorities ("IBOA"), Tab 1: *MacMillan Bloedel Ltd. v. Mullin* (1985), 50 C.P.C. 298 (B.C.C.A.) 300-301; **IBOA, Tab 2:** *John Doe v. Ontario (Information and Privacy Commissioner)* (1991), 7 C.P.C. (3d) 33 (Ont. Ct. - Gen. Div.) 36; **IBOA, Tab 3:** *Jones v. Tsige* (2011), 106 O.R. (3d) 721 (Ont. C.A.) para 23; **IBOA, Tab 4:** *Groia v. Law Society of Upper Canada*, 2014 ONSC 6026 (S.C.J. – Div. Ct.) para 4.

8. On a motion for intervener status, the matters to be considered include: (1) the nature of the case; (2) the issues which arise; (3) 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; and (4) the ability to offer submissions that are useful and different from those of the parties.

IBOA, Tab 5: *Peel (Regional Municipality) v. Great Atlantic and Pacific Co. of Canada* (1990), 74 O.R. (2d) 164 (Ont. C.A.) 167; **IBOA, Tab 6:** *2016596 Ontario Ltd. v. Ontario (Minister of Natural Resources)* (2003), 2 C.E.L.R. (3d) 1 (Ont. C.A.) para 6; **IBOA, Tab 7:** *Her Majesty the Queen in Right of Ontario v. Kingston (City)* (2003) Docket No. M30049, (Ont. C.A.) para 1; **IBOA, Tab 4:** *Groia*, para 4; **IBOA, Tab 8:** *Richmond Hill (Town) v. Elginbay Corporation*, 2015 ONSC 4979 (S.C.J. – Div. Ct.) para 8.

9. A friend of the court need not be “impartial”, “objective”, or “disinterested” in the outcome of the case. The fact that a proposed intervener is not indifferent to the outcome of the reference is not a reason to deny it the right to intervene. Nor is the fact that the position of a proposed intervener is generally aligned with the position of one of the parties a bar to intervention if the intervener can make a useful contribution to the analysis of the issues before the court.

IBOA, Tab 4: *Groia*, para 4; **IBOA, Tab 9:** *Oakwell Engineering Limited v. Enernorth Industries Inc.*, [2006] O.J. No. 1942 (Ont. C.A.) para 9; **IBOA, Tab 10:** *Childs v. Desormeaux* (2003) 67 O.R. (3d) 385 (Ont. C.A.) paras 13-16; **IBOA, Tab 8:** *Richmond Hill*, para 8.

10. The proposed Intervenor considers the issue of whether the Act is *intra vires* Parliament of profound public interest and importance, in that it will have far-reaching environmental and constitutional law implications that will impact the Canadian public. The resolution of this issue may fundamentally impact the ability of Parliament to act under the *Constitution Act, 1867* to effectively address climate change for the protection of public health and environmental quality.

MR, Tab 2: GV Aff, para 12-15.

11. While Ontario frames the issues as whether the Act can be supported under any federal head of power (and submits it cannot be), both Canada and Ontario mainly address whether the Act can be upheld under the national concern branch of Peace, Order, and Good Government of s. 91 of the *Constitution Act, 1867*, and do not adequately deal with two other federal heads of power: criminal law and trade and commerce. Given the proposed Intervenors' longstanding interest, experience, and expertise in environmental and constitutional issues relevant to the subject matter of this Reference, hearing the argument of the proposed Intervenors will provide a useful and distinct perspective that will be of assistance to the Court and make a useful contribution to resolution of the matter without causing injustice to the Parties.

MR, Tab 1: Notice of Motion, pages 2-5; **MR, Tab 2:** GV Aff, para 12-15. ; **Attorney General of Ontario Factum:** paras 48-49; **IBOA, Tab 6:** 2016596 *Ontario*, para 14; **IBOA, Tab 11:** David Scriven and Paul Muldoon, *Intervention as Friend of the Court: Rule 13 of the Ontario Rules of Civil Procedure* (1985), 6 *Advocates' Q* 448 at 467.

C. Conditions That May Be Imposed

12. The terms and conditions for granting leave to intervene as a friend of the court have included that the intervener: (1) be permitted to adduce further evidence; (2) deliver its factum promptly; (3) allow the Parties the opportunity to file a Reply factum up to a certain page length as they deem necessary; (4) be limited as to time for oral argument; and (5) not seek, nor be subject to, any award of costs, on the appeal (reference) or the motion. These potential terms and conditions are acceptable to the proposed Intervenor.

IBOA, Tab 12: *Ontario (Minister of the Environment) v. Castonguay Blasting Ltd.* (2011), 62 C.E.L.R. (3d) 171 (Ont. C.A.) para 9; IBOA, Tab 4: *Groia*, paras 11-12.


PART IV - ORDER REQUESTED

13. The proposed Intervenors respectfully request an Order of this court pursuant to Rules 13.2 and 13.03(2) of the *Rules of Civil Procedure* on the following terms:

- (a) That Greg Vezina be granted leave to intervene as a friend of the court for the purpose of rendering assistance to the Court by way of argument in the within Reference;
- (b) That Greg Vezina shall file further evidence;
- (c) That Greg Vezina be permitted to submit a factum not to exceed 10 pages, he shall serve and file five copies of the factum, as well as an electronic copy of the factum, by February 27, 2019;
- (d) That the Parties may file a Reply factum up to 10 pages in length as they deem necessary;
- (e) That Greg Vezina be allocated up to 20 minutes for oral argument at the hearing of the Reference; and
- (f) That costs of this motion and the Reference shall not be awarded to or against Greg Vezina.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

December 20, 2018



Greg Vezina

Proposed intervener

SCHEDULE “A”

LIST OF AUTHORITIES

Tab	Cases	Para(s)
1	<i>MacMillan Bloedel Ltd. v. Mullin</i> (1985), 50 C.P.C. 298 (B.C.C.A.) 300-301	7
2	<i>John Doe v. Ontario (Information and Privacy Commissioner)</i> (1991), 7 C.P.C. (3d) 33 (Ont. Ct. - Gen. Div.) 36	7
3	<i>Jones v. Tsige</i> (2011), 106 O.R. (3d) 721 (Ont. C.A.) para 23	7
4	<i>Groia v. Law Society of Upper Canada</i> , 2014 ONSC 6026 (S.C.J. – Div. Ct.) paras 4, 11-12	7-9, 12
5	<i>Peel (Regional Municipality) v. Great Atlantic and Pacific Co. of Canada</i> (1990), 74 O.R. (2d) 164 (Ont. C.A.) 167	8
6	<i>2016596 Ontario Ltd. v. Ontario (Minister of Natural Resources)</i> (2003), 2 C.E.L.R. (3d) 1 (Ont. C.A.) paras 6, 14	8, 11
7	<i>Her Majesty the Queen in Right of Ontario v. Kingston (City)</i> (2003) Docket No. M30049, (Ont. C.A.) para 1	8
8	<i>Richmond Hill (Town) v. Elginbay Corporation</i> , 2015 ONSC 4979 (S.C.J. – Div. Ct.) para 8	8-9
9	<i>Oakwell Engineering Limited v. Enernorth Industries Inc.</i> , [2006] O.J. No. 1942 (Ont. C.A.) para 9	9
10	<i>Childs v. Desormeaux</i> (2003) 67 O.R. (3d) 385 (Ont. C.A.) paras 13-16	9
12	<i>Ontario (Minister of the Environment) v. Castonguay Blasting Ltd.</i> (2011), 62 C.E.L.R. (3d) 171 (Ont. C.A.) para 9	12

Tab	Secondary Sources	Para(s)
11	David Scriven and Paul Muldoon, <i>Intervention as Friend of the Court: Rule 13 of the Ontario Rules of Civil Procedure</i> (1985), 6 Advocates’ Q 448 at 467	11

SCHEDULE “B”**LIST OF STATUTES****1. Rules 13.02 and 13.03(2) of the *Rules of Civil Procedure*:**

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.

13.03(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.

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PROCEEDING COMMENCED AT TORONTO

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