WILLMS & SHIER ENVIRONMENTAL LAW MOOT COURT COMPETITION 2022

S.E.M.C.C. File Number: 03-04-2022

IN THE SUPREME ENVIRONMENTAL MOOT COURT OF CANADA

(ON APPEAL FROM THE SUPREME COURT OF CANADA)

B E T W E E N:

ATTORNEY GENERAL OF ALBERTA, ATTORNEY GENERAL OF SASKATCHEWAN and ATTORNEY GENERAL OF ONTARIO

APPELLANTS
(Appellants)

- and -

ATTORNEY GENERAL OF CANADA

RESPONDENT
(Respondent)

FACTUM OF THE APPELLANTS
ATTORNEY GENERAL OF ALBERTA, ATTORNEY GENERAL OF SASKATCHEWAN and ATTORNEY GENERAL OF ONTARIO

Pursuant to Rule 12 of the
Willms & Shier Environmental Law Moot Official Competition Rules 2022

TEAM #2022-11

TO: **THE REGISTRAR OF THE**
SUPREME ENVIRONMENTAL MOOT COURT OF CANADA

AND TO: **ALL REGISTERED TEAMS**

TABLE OF CONTENTS

Page No.

PART I -- OVERVIEW AND STATEMENT OF FACTS

A. Overview of the Appellants' Position

1 This appeal seeks to determine whether the Federal Government has jurisdiction to unilaterally impose its preferred policy approach onto the Provinces to reduce greenhouse gas ("GHG") emissions. With federalism at stake, the Court must answer two questions: (1) can the national concern ("NC") branch of Parliament's Peace, Order and Good Government ("POGG") power justify the *Greenhouse Gas Pollution Pricing Act* ("*GGPPA*"); and (2) is the fuel charge (the "Charge") imposed under Part 1 of the *GGPPA* ("Part 1") a valid tax or regulatory scheme. The answer to both questions is no.

2 The *GGPPA* is unconstitutional for three reasons.

3 First, properly characterized, the *GGPPA*'s pith and substance is reducing GHG emissions in specific provinces through a fuel charge and industrial emission limits. Such a broad power would effectively eviscerate provincial jurisdiction.

4 Second, the *GGPPA*'s matter is not valid under POGG's NC branch. The *GGPPA* artificially creates a federal role over the provincial jurisdiction's subject matter. The backstop nature of the *GGPPA* admits to this conclusion. Provinces are also capable of implementing carbon pricing policies – they simply disagree with Parliament's chosen means. Further, recognizing the matter under the NC doctrine would severely limit provincial ability to regulate carbon pricing under their jurisdiction. This is "coercive federalism," not cooperative federalism.

5 Third, Part 1 is not a valid regulatory scheme or a valid federal tax. While the Charge is more properly characterized as a tax, it empowers the Governor in Council ("GIC") unlimited discretion and violates s 53 of the *Constitution Act,1867*.

B. Statement of the Facts

(i) Cooperative provincial-federal approach

6 In 2015, Canada signed the *Paris Agreement*, agreeing to hold global temperature increases to below 2.0°C above pre-industrial levels. Canada further committed to meet a national target to reduce GHG emissions. The *Paris Agreement* did not identify carbon pricing as a mandatory tool to reduce GHG emissions. Instead, Article 6.8 of the *Paris Agreement* recognized "integrated, holistic and balanced non-market approaches" to meet national targets.

Paris Agreement, 12 December 2015, UN Doc FCCC/CP/2015/10/Add.1, art 6.8.

7 In 2016, all provincial, territorial, and federal First Ministers signed the *Vancouver Declaration on Clean Growth and Climate Change* ("*Vancouver Declaration*"). All parties agreed to meet Canada's *Paris Agreement* targets through a collaborative approach, setting out multiple climate action measures.

Vancouver Declaration on clean growth and climate change, March 3, 2016, online: *Canadian Intergovernmental Conference Secretariat* <www.scics.ca/en/product-produit/vancouver-declaration-on-clean-growth-and-climate-change>.

8 The *Vancouver Declaration* recognized provincial autonomy and capability to create GHG reduction policies. Specifically, it acknowledged the economic diversity of provinces, that governments were already taking action to reduce GHG emissions and that provinces were climate leaders.

Vancouver Declaration, *supra* para 7.

9 The *Vancouver Declaration* further stated that the federal government would work with the provinces "to complement and support their actions without duplicating them…". Moreover, the *Vancouver Declaration* highlighted that "provinces and territories have the flexibility to design their own policies to meet emission reduction targets, including their own carbon pricing mechanisms…". Ultimately, the First Ministers agreed to adopt measures "to each province's and territory's specific circumstances."

Vancouver Declaration, supra para 7.

10 The First Ministers subsequently formed several working groups to determine effective measures for reducing GHG emissions. Among them was the Working Group on Carbon Pricing Mechanisms. Its report did not indicate that provinces and territories must adopt carbon pricing mechanisms, but stated that when designing carbon pricing policies, policymakers must "be flexible and support existing provincial and territorial actions" (Working Group on Carbon Pricing Mechanisms).

Working Group on Carbon Pricing Mechanisms, "Final Report" (2016) at 3, online (pdf): *Government of Canada* <www.canada.ca/content/dam/eccc/migration/cc/content/6/4/7/64778dd5-e2d9-4930-be59-d6db7db5cbc0/wg_report_carbon-20pricing_e_v4.pdf> [Carbon Pricing Group].

11 The Specific Mitigation Opportunities Working Group ("Mitigation Group") also developed broad non-pricing policy options to reduce emissions across Canada's economy. It identified over 40 non-pricing GHG reduction measures, including shifting to lower carbon fuels,

improving energy efficiency of vehicles and systems, ambitious building codes, and infrastructure investments (Mitigation Group).

> Specific Mitigation Opportunities Working Group, "Final Report" (2016) at 5, 6-8, online (pdf): *Canada* <www.canada.ca/content/dam/eccc/migration/cc/content/6/4/7/64778dd5-e2d9-4930-be59-d6db7db5cbc0/wg_report_specific_mitigation_opportunities_en_v04.pdf> [Mitigation Group].

(ii) Subsequent federal actions

12 In 2016, the Federal Government released the *Pan-Canadian Framework on Clean Growth and Climate Change* ("*Pan-Canadian Framework*") without full provincial endorsement. It featured carbon pricing as key to Canada's climate change plan and outlined a federally determined benchmark for Provinces to meet. If a Province did not meet the benchmark, the Federal Government would impose its own carbon pricing scheme in that province (a "backstop") (*Pan-Canadian Framework*).

> Environment and Climate Change Canada, "Pan-Canadian Framework on Clean Growth and Climate Change" (2016) at 50, online (pdf): *Government of Canada* <www.publications.gc.ca/collections/collection_2017/eccc/En4-294-2016-eng.pdf> [*Pan-Canadian Framework*].

13 Ontario and Alberta initially endorsed the *Pan-Canadian Framework* but withdrew after disagreeing with carbon pricing as the central way to address GHG emissions. Saskatchewan never signed onto the framework, also disagreeing with the federal approach.

14 The federal executive introduced the *GGPPA* to Parliament on March 27, 2018. The *GGPPA* received Royal Assent shortly after.

15 The *GGPPA* requires all jurisdictions to implement a carbon pricing mechanism, even if other non-pricing mechanisms also achieve Canada's climate goals. The *GGPPA* empowers the GIC to "list" provinces which do not meet their pricing preferences for the "purpose of ensuring that the pricing of greenhouse gas emissions is applied broadly in Canada at levels that the [GIC] considers appropriate" (*GGPPA*).

> *Greenhouse Gas Pollution Pricing Act,* SC 2018, c 12, s 186, ss 166(2), 189(1) [*GGPPA*].

16 Part 1 of the *GGPPA* imposes a fuel charge on producers, distributers, and importers of numerous types of carbon-based fuel if the GIC lists a province. Part 2 of the *GGPPA* ("Part 2") forces a pricing regime for certain large industrial emitters within listed provinces, even if the provinces have their own output-based pricing system.

> *GGPPA, supra* para 15 at ss 166(2), 189(1).

(iii) Provincial action to combat climate change

17 The Appellants already have carbon pricing mechanisms in place that target large industrial emitters of GHGs, with some systems more stringent than Part 2.

> Government of Alberta, "Technology Innovation and Emissions Reduction Regulation" (2021), online: *Government of Alberta* <www.alberta.ca/technology-innovation-and-emissions-reduction-regulation.aspx>.
> *The Management and Reduction of Greenhouse Gases Act*, SS 2010, c M-2.01.
> O Reg 241/19.

18 The provinces have also implemented non-pricing measures to reduce GHG emissions. Ontario was the first province to close coal-fired plants, which led to the greatest reduction in GHG emissions in North America (Ontario Ministry of Energy). From 2005 to 2019, Ontario's emissions decreased by 21% (Environment and Climate Change Canada).

> Ontario Ministry of Energy, "The End of Coal" (last modified 23 August 2021), online: *Government of Ontario* <www.ontario.ca/page/end-coal>.
> Environment and Climate Change Canada, "National Inventory Report 1990-2019: Greenhouse Gas Sources and Sinks in Canada" (2021) at 11, online (pdf): *Government of Canada* <www.publications.gc.ca/collections/collection_2021/eccc/En81-4-2019-1-eng.pdf>.

19 Alberta has also implemented several GHG reduction programs. For example, the province capped GHG emissions for all oil sands sites and became the first regional government in the continent to commit to a methane emissions reduction target in the oil and gas sector (Government of Alberta).

> Government of Alberta, "Capping oil sands emissions" (2021), online: *Government of Alberta* <www.alberta.ca/climate-oilsands-emissions.aspx>.
> Government of Alberta, "Reducing methane emissions" (2021), online: *Government of Alberta* <www.alberta.ca/climate-methane-emissions.aspx>.

20 In 2017, Saskatchewan also released its climate strategy, *Prairie Resilience: a Made-in Saskatchewan Climate Change Strategy*, which includes regulating methane emissions in the oil and gas sector and a technology and innovation fund.

> Government of Saskatchewan, "Prairie Resilience: A Made-in-Saskatchewan Climate Change Strategy" (2017), online: *Government of Saskatchewan* <www.saskatchewan.ca/business/environmental-protection-and-sustainability/a-made-in-saskatchewan-climate-change-strategy/saskatchewans-climate-change-strategy>.

PART II -- QUESTIONS IN ISSUE

21 The following questions are at issue in this appeal:

(1) Is the *GGPPA* as a whole *intra vires* Parliament as an exercise of Parliament's jurisdiction to legislate for the peace, order and good government of Canada to address a matter of national concern?

(2) Is the fuel charge under Part 1 of the *GGPPA intra vires* Parliament as a valid regulatory charge or tax?

PART III -- ARGUMENT

22 The Appellants submit the Supreme Court of Canada ("SCC") majority ("Majority") erred in determining that the *GGPPA* is *intra vires* Parliament as a matter of NC and that the Charges under Part 1 are valid regulatory charges.

23 The Appellants make five arguments: (**A**) the *GGPPA*'s pith and substance is reducing GHG emissions in specific provinces through fuel charges and industrial limits; (**B)** the Majority's approach to the NC doctrine ignores its residual nature; (**C**) even under the Majority's reformulated test, the new threshold inquiry is unduly politicized; (**D**) the *GGPPA*'s matter is not single, distinct, or indivisible from matters of provincial concern; (**E)** the *GGPPA*'s matter has a scale of impact on provincial jurisdiction is not reconcilable with the fundamental distribution of legislative power; and (**F**) the Part 1 Charge is not a valid tax or regulatory scheme and violates constitutional principles.

24 The standard of review for this appeal is correctness. Given that this appeal concerns a matter of law with profound implications on the division of powers POGG analysis, the Court is required to "delineate and refine [its] legal rules and ensure [its] universal application" at a correctness standard (*Housen*).

Housen v Nikolaisen, 2002 SCC 33 at para 9 [*Housen*].

A. The *GGPPA*'s pith and substance is reducing GHG emissions in specific provinces through fuel charges and industrial emission limits

25 The Court must first characterize the *GGPPA*'s "pith and substance" to determine its constitutional validity [*2018 Securities Reference*]. The Court must consider both the purpose and effects of the impugned legislation at this stage [*Firearms*]. To do so, the Court must examine: (1) the legislative content, including the preamble; and (2) the extrinsic evidence, including Hansard [*Firearms*].

Reference re Pan-Canadian Securities Regulation, 2018 SCC 48 at para 86 [*2018 Securities Reference*].
Reference re Firearms Act, 2000 SCC 31 at para 16, 17 [*Firearms Reference*].

(i) The legislative content and extrinsic evidence demonstrate Parliament's goal to reduce GHG emissions

26 A close reading of the *GGPPA* indicates that its purpose is to mitigate climate change by reducing provincial GHG emissions. The *GGPPA* operates only within provinces that do not have "sufficiently stringent" GHG pricing systems. Schedule 1 outlines these "listed" provinces. Currently, only seven provinces are listed (*GGPPA*). Consequently, the *GGPPA* does not apply uniformly across the nation.

GGPPA, *supra* para 15 at ss 166, 189, Schedule 1.

27 The *GGPPA* is backstop mechanism that applies to specific provinces at the GIC's sole and unfettered discretion. Under sections 166(2) and 189(1), the GIC can add, delete, or vary any provinces listed "for the purpose of ensuring that the pricing of greenhouse gas emissions is applied broadly in Canada at levels that the [GIC] considers appropriate." In listing a province, the GIC must "take into account, as a primary factor, the stringency of provincial pricing mechanisms for greenhouse gas emissions."

GGPPA, *supra* para 15 at ss 166(2)-(3), 189(1)-(2).

28 The preamble signals that Parliament's goal was to reduce GHG emissions through carbon pricing to encourage behaviour change. It recognizes Parliament's responsibility to "minimize impacts of climate change on future generations", and Canada's international commitments under the *Paris Agreement* to reduce global temperature increases (*GGPPA*). The preamble also states that behaviour change is needed "for effective action against climate change" with carbon pricing as an efficient way to encourage such behavioural changes (*GGPPA*).

GGPPA, supra para 15.

29 In its effects, the *GGPPA* regulates a wide range of GHG-enabling and emitting businesses activities. The *GGPPA*'s effects are not whether it will achieve its purpose, but its actual legal and practical effects (*Firearms*).

Firearms, *supra* para 25 at para 17.

30 Part 1 imposes a fuel charge against registered distributors of over 20 different GHG-producing fuels that are set out in Schedule 2. The GIC has the sole discretion to add or remove fuels from this list. Notably, the Charge is imposed on registered distributors, not on consumers

whose behaviour the *GGPPA* purports to primarily change. Therefore, Part 1 regulates expansive fuels and places financial pressures on businesses, who may pass on costs to consumers.

GGPPA, supra para 15 at Schedule 2.

31 Part 2 establishes an output-based pricing system for large industrial GHG emitters. Part 2 only applies to "covered facilities" in 38 specified sectors. The GIC retains the discretion to determine what constitutes a "covered facility". While Part 1 does not apply to "covered facilities", Part 2 requires covered facilities to pay for emissions above sector limits, subject to the GIC's discretion. Therefore, Part 2 aims to influence behaviour by increasing prices for industrial emitters with the effect of regulating activities across a broad range of industries.

32 The extrinsic events leading up to the *GGPPA*'s enactment point to one purpose – reducing GHG emissions. The *Vancouver Declaration*, the *Paris Agreement*, the Working Group reports, and the *Pan-Canadian Framework* all inform this conclusion.

(ii) The Majority erred in characterizing the *GGPPA*'s pith and substance

33 The Majority held that the *GGPPA*'s pith and substance was "establishing minimum national standards of GHG price stringency to reduce GHG emissions" (*GGPPA Reference*). The Appellants submit that this is incorrect.

References re Greenhouse Gas Pollution Pricing Act, 2021 SCC 11 at para 80 [*GGPPA Reference*].

34 First, this pith and substance is erroneous because it conflates the characterization and classification stages of the division of powers analysis. Doing so carries "…a danger that the whole exercise will become blurred and overly oriented towards results" (*Chatterjee*). By including the term "national" in the pith and substance, the characterization stage by default presumes that the law falls under a federal jurisdiction.

Chatterjee v Ontario (Attorney General), 2009 SCC 19 at para 16 [*Chatterjee*].

35 Second, the Majority's pith and substance fails to incorporate the *GGPPA*'s prevailing backstop feature. The *GGPPA* does not operate uniformly across the nation, and does not apply "nationally", but instead imposes an increasing benchmark and scope of application determined at the GIC's discretion.

36 Therefore, the Appellants submit that a more accurate pith and substance for the *GGPPA* is "reducing provincial GHG emissions in specified provinces through fuel charges and industrial emission limits."

B. The Majority's approach to the NC doctrine ignores its residual nature

37 The Majority modernized the NC test that the SCC developed in *R v Crown Zellerbach. Crown Zellerbach* established that a matter is of NC where it has a "singleness, distinctiveness and indivisibility that clearly distinguishes it from matters of provincial concern." This analysis requires the Court to consider the effect on extra-provincial interests if a province fails to regulate the matter ("provincial inability" test) (*Crown Zellerbach*).

R v Crown Zellerbach,[1988] 1 SCR 401 at 432, 49 DLR (4th) 161 [*Crown Zellerbach*].

38 However, the Majority introduced a new "threshold inquiry." The inquiry asks "…whether the matter is of sufficient concern to Canada as a whole to warrant consideration under the [NC] doctrine" (*GGPPA Reference*).

GGPPA Reference, supra para 33 at para 142.

39 The Majority added two new guiding principles to determine a matter's singleness, distinctiveness, and indivisibility ("SDI"). The NC doctrine only applies: (1) to specific and identifiable matters qualitatively different from matters of provincial concern; and (2) where the evidence establishes provincial inability to deal with the matter.

GGPPA Reference, *supra* para 33 at para 142.

40 The Majority's approach to the NC test veers away from the original purpose of the NC doctrine. The Majority enthusiastically adopted the doctrine, despite its residual nature and its extreme constitutional consequences.

41 The NC doctrine is a "residual power of last resort" (*GGPPA Reference*). In *R v Hydro-Québec,* the SCC recognized the doctrine as one with "profound issues respecting the federal structure of our Constitution", opting instead to uphold the impugned environmental legislation at issue under the less-intrusive criminal law power. While the Court has previously upheld certain matters relating to the environment under the NC doctrine, today these matters are likely a better fit under the criminal law power (Hogg).

GGPPA Reference, *supra* para 33 at para 457.

R v Hydro-Québec, [1997] 3 SCR 213 at para 110, 151 DLR (4th) 32 [*Hydro*-Québec].
Peter W Hogg, "Constitutional Authority over Greenhouse Gas Emissions" (2009) 46:2 Alta L Rev 507 at 516.

42 The very opening words of section 91 of the *Constitution Act, 1867* contemplates this residual nature; Parliament can make laws for POGG "…in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces".

Constitution Act,1867 (UK), 30 & 31 Vict, c 3, s 91, reprinted in RSC 1985, Appendix II, No 5 [*Constitution Act, 1867*].

43 This clause does not authorize Parliament to make laws where the matter is assigned exclusively to the provinces (Lysyk). Doing so would severely disrupt federalism and rapidly diminish the distribution of powers (*Anti-Inflation*).

Kenneth Lysyk, "The Constitutional Reform and the Introductory Clause of Section 91: Residual and Emergency Law-Making Authority" (1979) 57 Can Bar Rev 531 at 542.
Re: Anti-Inflation Act, [1976] 2 SCR 373 at 445, 68 DLR (3d) 452 [*Anti-Inflation*].

44 The Appellants submit that this Court should first rely on the enumerated classes of subjects under section 91 and section 92 before looking to the NC doctrine. Indeed, as the matter relates to environmental protection, the Majority could have explored the *GGPPA*'s validity under the far-less intrusive criminal law power, like in *Hydro-Québec.* Instead, the Majority ignored the constitutional consequences in its "enthusiastic adoption" of the NC doctrine (*Hydro-Québec*).

Hydro-Québec, *supra* para 41 at para 108.

C. The Majority's threshold inquiry improperly evaluated the efficacy of GHG reduction policies

45 If this Court accepts the Majority's new threshold inquiry, the Appellants submit that the Majority erred in this step by unduly focusing on carbon pricing's efficacy. A measure's efficacy is not relevant to the court's division of powers analysis. Courts must defer such policy matters to elected government officials and focus on legislative competence (*2011 Securities Reference*; *Anti-Inflation*).

Reference re Securities Act, 2011 SCC 66 at para 90 [*2011 Securities Reference*].
Anti-Inflation, *supra* para 43 at 446-7, 458.

46 However, the Majority upheld Parliament's preferred policy approach, declaring carbon pricing a "necessary tool" and "integral to reducing GHG emissions." (*GGPPA Reference*). The

Majority did not consider the over-40 other possible GHG reduction measures that the Mitigation Group identified. A policy's efficacy is for the government to decide, not this Court.

GGPPA Reference, *supra* para 33 at para 142.

D. The matter is not single, distinct and indivisible from provincial matters

47 The Majority significantly altered the test for SDI through its two new principles.

48 Under the first principle, in determining whether the matter is a specific and identifiable matter qualitatively different from provincial matters, the Majority identified three factors to consider: (1) whether the matter is mainly extra-provincial and international in character, having regard to its inherent nature and effects; (2) the content of any international agreements regarding the matter; and (3) whether a federal role exists that is distinct and not duplicative of the provincial role (*GGPPA Reference*).

GGPPA Reference, *supra* para 33 at para 151.

49 Under the second principle, the Majority held that provincial inability exists only where: (1) the provinces cannot jointly or severally address the matter; (2) other provinces cannot successfully address the matter if one or more provinces fail to cooperate; and (3) grave extra-provincial consequences would exist if a province fails to address the matter within its border (*GGPPA Reference*).

GGPPA Reference, *supra* para 33 at para 157.

50 The Appellants submit that this Court cannot even uphold the *GGPPA* under the Majority's test because: (1) the matter is not constitutionally distinct or indivisible; (2) the matter is an aggregate of provincial matters; and (3) provinces can implement carbon pricing measures.

(i) The matter is not constitutionally distinct or extra-provincial in nature

51 The *GPPA*'s matter is not distinct. The Majority erred in holding that the matter is distinct, reasoning that GHGs are specific and identifiable diffuse pollutants with known extraprovincial impacts.

GGPPA Reference, *supra* para 33 at para 172-3.

52 The Appellants submit that a matter should be *constitutionally* distinct from provincial matters, and not distinct simply by scientific definition or an extraprovincial nature. In *Crown*

Zellerbach, the issue was not that marine pollution was specific and identifiable on its own but rather it was distinct *in relation* to freshwater pollution, an area under provincial jurisdiction.

Crown Zellerbach, *supra* para 37 at 436.

53 Unlike marine pollution, no clear distinction between pricing GHG emissions under federal jurisdiction or pricing GHG emissions under provincial jurisdiction exists. Indeed, the *GGPPA* itself, through its backstop mechanism, contemplates that the federal government can price GHG emissions, or the province can do so if it meets the GIC's imposed stringency standards. Thus, the matter is not single or distinct.

54 Furthermore, the matter is not indivisible simply because it crosses boundaries. In *Crown Zellerbach*, the Court held that the boundary between territorial sea and internal marine observations created unacceptable *uncertainty in regulating the matter*. The court explicitly stated that "[t]his, and not simply the possibility or likelihood of the movement of pollutants across that line, is what constitutes the essential indivisibility of the matter…" (*Crown Zellerbach*).

Crown Zellerbach, supra para 37 at 437.

55 Similarly, the fact that GHG emissions are diffuse pollutants does not establish their invisibility; rather the *uncertainty* in *who* regulates the substance does. However, no such uncertainty exists here. There is no question that provinces can, and continue to, regulate GHG emissions, including pricing. Therefore, the matter is not constitutionally indivisible.

(ii) The matter is not a federally distinct role and not a double aspect

56 The Appellants submit that the matter is an aggregate of provincial matters. Provinces have long regulated GHG emissions, including carbon pricing, under existing provincial heads of power (*Constitution Act, 1867*). In particular, the Appellants have enacted similar carbon pricing mechanisms to the *GGPPA*. Therefore, the *GGPPA* is duplicative. The *GGPPA* cannot succeed during this analysis simply because an aggregate response from Parliament is more convenient.

Constitution Act, 1867, *supra* para 42 at ss 92(13), 92(16), 92A.

57 Further, unlike past matters under the NC doctrine, carbon pricing does not have a federally distinct role. These recognized matters often had a strong connection to or were inseparable from an existing federal power. For example, aeronautics historically fell under the s

132 federal treaty power of the *Constitution Act, 1867* (*Johannesson*). Marine pollution is connected to seacoast and inland fisheries as well as navigation and shipping powers (*Crown Zellerbach*). And, the production, use and application of atomic energy relate to the federal government's interest in national defence (*Ontario Hydro*). Carbon pricing is unlike any of these examples.

> *Johannesson v Municipality of West St Paul*, [1952] 1 SCR 292, [1951] 4 DLR 609 [*Johannesson*].
> *Crown Zellerbach*, *supra* para 37.
> *Ontario Hydro v. Ontario (Labour Relations Board)*, [1993] 3 SCR 327 at 379, 107 DLR (4th) 457 [*Ontario Hydro*].

58 Adding the terms "minimum national standards" merely masks the *GGPPA*'s duplicative role. As Justice Brown's dissent correctly stated, "…*[h]ow else*, after all, *would* national standards work, if not *nationally*?" (*GGPPA Reference*). The fact that the *GGPPA* does not apply uniformly across the country is additional proof of its duplicative role.

> *GGPPA Reference*, *supra* para 33 at para 439.

59 Further, the double aspect doctrine does not apply. The doctrine allows for the concurrent application – not concurrent jurisdiction – of federal and provincial legislation over a matter (*2011 Securities Reference*). In particular, the double aspect doctrine does not allow a law to regulate matters of exclusive jurisdiction, such as a municipal by-law that regulates matters under federal jurisdiction (*Lacombe*). Both heads of power cannot legislate the same aspect of a matter (*Bell Canada*).

> *2011 Securities Reference*, *supra* para 45 at para 66.
> *Quebec (Attorney General) v Lacombe*, 2010 SCC 38 at paras 26-39 [*Lacombe*].
> *Bell Canada v Quebec (Commission de la santé et de la sécurité du travail),* [1988] 1 SCR 749 at 766, 51 DLR (4th) 161 [*Bell Canada*].

60 This outcome is precisely what would occur if the Court upheld the *GGPPA* under the double aspect doctrine. The Majority asserts that the federal government regulates GHG pricing from a federal perspective, namely "addressing the risk of grave extraprovincial and international harm associated with a purely interprovincial approach to GHG pricing" (*GGPPA Reference*). However, provinces also regulate from this perspective. The application of "minimum national standards" artificially separates the provincial and federal role when essentially this is not two aspects of the same fact situation. It is a single aspect that gives the federal executive "the upper hand and the final say" (*GGPPA Reference*).

> *GGPPA Reference*, *supra* para 33 at para 198.

GGPPA Reference, *supra* para 33 at para 593.

(iii) Provinces are capable of establishing stringent pricing to reduce GHG emissions

61 The Appellants submit that provinces can constitutionally regulate GHG pricing either jointly or severally. As established in para 56, they already do. The provinces cannot implement "national standards", yet this is an invalid self-fulling loophole that prioritizes Parliament's preferred policy approach.

62 The very nature of the *GGPPA* as a backstop mechanism is a confession that provinces can enact comparable, if not identical, carbon pricing schemes (*GGPPA Reference*). Further, the backstop mechanism resembles equivalency provisions, which exempt a province from federal regulation if the province has equivalent provisions in force.

GGPPA Reference, *supra* para 33 at para 310.

63 In *Hydro-Québec,* the SCC determined that equivalency provisions in the *Canadian Environmental Protection Act* (as it was then known) undermined the notion that provinces were incapable of regulating the matter at issue. The Court held that "[i]f the provinces were unable to regulate, there would be even more reason for the federal government not to agree to withdraw from the field" (*Hydro-Québec*). Similarly, if provinces could not regulate carbon pricing, then the federal government would not allow provinces to implement their own legislation by default.

Hydro-Québec, *supra* para 44 at para 108.

64 The Appellants further submit that a failure to include one or more provinces in the scheme would not jeopardize its success across the country. While the Appellants concede that carbon pricing can reduce GHG emissions, other provincial initiatives do as well. For example, Ontario's coal phase-out program, a non-pricing tool, led to the greatest reduction in GHG emissions in North America.

65 The Appellants also submit that other provinces are not at risk of grave extraprovincial consequences. According to the Majority, a province's insufficiently stringent GHG pricing scheme could undermine GHG pricing in Canada due to the risk of carbon leakage (*GGPPA Reference*). The Court defined carbon leakage as "a phenomenon by which businesses in sectors with high levels of carbon emissions relocate to jurisdictions with less stringent carbon pricing policies" (*GGPPA Reference*).

GGPPA Reference, *supra* para 33 at para 186.

66 However, the *GGPPA* does not address carbon leakage. The *GGPPA* does not create a uniform carbon price across the provinces, it only establishes a *minimum* carbon price. If the federal executive truly cared about the environmental impacts of carbon leakage, then the *GGPPA* "would benchmark a ceiling as well as a floor price for carbon" (*Saskatchewan GGPPA Reference*).

References re Greenhouse Gas Pollution Pricing Act, 2019 SKCA 40 at para 452 [*Saskatchewan GGPPA Reference*].

67 The Appellants do not dispute the grave consequences of climate inaction. However, to claim that the provinces cannot address GHG emissions merely because they do not implement the Parliament's preferred policy is inaccurate.

68 In fact, the Appellants *are* taking serious action to reduce GHG emissions. Their commitments under the *Vancouver Declaration* demonstrate this. From industrial methane emission reduction programs to coal phase-out regulations; from energy efficiency programs to stringent output-based pricing systems, the Appellants are using their recognized flexibility to adopt region-specific climate policies. The federal and provincial executives simply disagree with one another's policies. This policy disagreement does not translate to a provincial inability.

E. Granting Parliament jurisdiction over the matter would drastically impact the constitutional division of powers

69 The Appellants submit the matter's focus on GHG pricing is not minimally intrusive on provincial jurisdiction. Like the environment, pricing GHG emissions is a diffuse subject that encroaches on several assigned heads of power, such as the management of non-renewable resources and property and civil rights (*Oldman River*). Indeed, as echoed in *Anti-Inflation*, the matter is "so pervasive that it knows no bounds."

Friends of the Oldman River Society v Canada (Minister of Transport), [1992] 1 SCR 3 at 63-4, 88 DLR (4th) 1 [*Oldman River Society*].
Anti-Inflation, supra para 43 at 445.

70 The *GGPPA* effectively displaces provincial jurisdiction over carbon pricing. It is not analogous to the legislation at issue in the *2018 Securities Reference.* In that case*,* the federal legislation at issue was limited in scope – only addressing the regulation of securities firmly in the federal government's jurisdiction. The legislation was designed to *complement* provincial legislation regarding the day-day regulation of securities trade (*2018 Securities Reference*). In

contrast, the *GGPPA* is designed to completely displace provincial jurisdiction over carbon pricing if the preferred federal benchmark is not met. Such federal takeover is not minimal.

> *2018 Securities Reference*, *supra* para 25 at para 21, 96.

71 The Appellants further submit that the matter grants federal supervisory powers over areas of provincial jurisdiction, which is contrary to the principle of federalism highlighted in *Reference re Secession of Quebec*:

> The principle of federalism recognizes the diversity of the component parts of Confederation, and the autonomy of provincial governments to develop their societies within their respective spheres of jurisdiction.
>
> *Reference re Secession of Quebec*, [1998] 2 SCR 217 at para 58, 151 DLR (4th) 385 [*Secession Reference*].

72 As the Majority stated, under the *GGPPA*, "provinces and territories are free to design and legislate any GHG pricing system *as long as* it meets minimum national standards of price stringency." This is not freedom to legislate at all, nor is it cooperative federalism. It is coercion. Recognizing the superiority of federal policies – where a province has jurisdiction no less – directly contradicts the fundamental distribution of constitutional powers. It "subordinates provincial governments to a central authority" (*Referendum Act*).

> *GGPPA Reference*, *supra* para 33 at para 200.
> *Re Initiative and Referendum Act*, [1919] AC 935 at 942, [1919] JCJ No 5 [*Referendum Act*].

73 The *GGPPA* effectively grants the GIC unfettered discretion. The GIC's discretion to impose the *GGPPA* on a province is only limited to considering the stringency of provincial pricing mechanisms for GHG emissions. "Stringency" is not defined but is "prescribed" by the GIC. This vague wording creates a self-fulfilling prophecy where the GIC both decides whether a price is sufficiently stringent and whether a province should be listed.

> *GGPPA, supra* para 15 at ss 166(3), 189(2).

74 Accordingly, the *GGPPA* undermines a province's ability to predicably regulate carbon pricing, at the hands of the federal executive's sole discretion. The *GGPPA* is fundamentally at odds with the distribution of legislative power and is *ultra vires* Parliament in its entirety.

F. The fuel charge under Part 1 is not a valid tax or regulatory charge

75 Even if this Court finds that the *GGPPA* is *intra vires* under the NCD, the Charge imposed under Part 1 remains unconstitutional. The Charge (1) is an invalid regulatory charge;

(2) violates section 53 of the *Constitution Act, 1867*; and (3) violates fundamental constitutional principles.

76 As with the analysis of the *GGPPA* overall, this Court must characterize the "pith and substance" of Part 1 to determine whether it is properly a taxation or regulatory matter. A government levy is in pith and substance a tax if it is "unconnected to any form of a regulatory scheme" (*Westbank*). To establish this, the Court must find that Part 1 has the characteristics of a tax and is distinguishable from a regulatory charge.

> *Westbank First Nation v British Columbia Hydro and Power Authority*, [1999] 3 SCR 134 at para 43, 176 DLR (4th) 276 [*Westbank*].

(i) Part I meets the indicia of taxation

77 Part 1 meets the four factors of taxation as established by the SCC: it is (1) enforceable by law; (2) imposed by the legislature; (3) levied by a public body, and (4) intended for a public purpose (*620 Connaught*).

> *620 Connaught Ltd. v Canada (Attorney General)*, 2008 SCC 7 [*620 Connaught*].

78 The Court must also determine whether a levy is more properly characterized as a regulatory charge that is "primarily [imposed] for regulatory purposes, or as necessarily incidental to a broader regulatory scheme".

> *Re Exported Natural Gas Tax*, [1982] 1 SCR 1004 at p. 1070, 136 DLR (3d) 385 [*Exported Natural Gas Tax*].

(ii) Part 1 if not a complete and detailed code of regulation and is more properly classified as a taxation statute

79 A regulatory scheme exists where "some or all of the following indicia" (*Westbank*) are present: (1) a complete and detailed code of regulation; (2) a specific regulatory purpose which seeks to affect the behaviour of individuals; (3) costs of the regulation; and (4) a relationship between the regulation and the person being regulated, where the person either causes the need for regulation, or benefits from it.

> *Westbank*, *supra* para 76 at para 43.

80 To satisfy the first indicium, a code should either comprise of—or be associated with—multiple statutes and regulations. This factor was met in *Allard* and *Ontario Home Builders*, where the SCC held that the impugned schemes were detailed regulations that operated in conjunction with numerous statutes.

Allard Contractors Ltd v Coquitlam (District), [1993] 4 SCR 371 at p. 409 109 DLR (4th) 46 [*Allard*].

Ontario Home Builders' Association v York Region Board of Education, [1996] 2 SCR 929 at para 28, 137 DLR (4th) 449 [*Ontario Home Builders*].

81 Part 1 is neither is—nor is it part of—a complete and detailed regulatory code. It merely imposes a levy on fuels and establishes a payment regime. The Charge is a self-contained scheme that does not depend on other statutes or regulations to be implemented.

82 Part 1 also shares much of its structure with tax legislation, including parallel provisions found both the *Excise Tax Act*, RSC, 1985, c E-15 and the *Income Tax Act* RSC 1985, c 1. Part 1 includes provisions essential to taxation statutes, not codes of regulation. These include anti-avoidance, assessments and reassessments, right of appeal to the Tax Court of Canada:

Provisions Indicative of Tax Legislation	**Part 1 of the *GGPPA***	***Excise Tax Act, 1985***	***Income Tax Act, 1985***
Anti-Avoidance	"If a transaction is an avoidance transaction, the charge-related consequences to a person must be determined as reasonable in the circumstances". (Subsection 82(2))	"Where a transaction is an avoidance transaction, the tax consequences to a person shall be determined as is reasonable in the circumstances". (Section 274 of the *Excise Tax Act, 1985* and Subsection 245(2) of the *Income Tax Act, 1985*)	
Assessments and Reassessments	"The Minister may assess a person for any charge or other amount payable by the person under this Part". (Subsection 108(1))	"The Minister may […] assess a person for any tax, penalty, interest or other sum payable by that person under this Act". (Subsection 81.1(1))	"The Minister shall […] examine a taxpayer's return of income […] and determine the amount of tax […] payable". (Subsection 152(1)(b))
Right of Appeal to the Tax Court of Canada	"[A] person that has filed a notice of objection to an assessment may appeal to the Tax Court of Canada". (Subsection 116(1))	"Where a person files a notice of objection to an assessment […] the person may […] appeal therefrom to the Tax Court". (Subsection 302(a))	"Where a taxpayer has served notice of objection to an assessment […] the taxpayer may appeal to the Tax Court of Canada". Section 169(1))

(iii) Part 1 does not serve a regulatory purpose that seeks to affect behaviour

83 If Part 1's purpose to change behaviour is accepted, the Charge is designed to influence the behaviour of *registered distributors*, not consumers and businesses directly. Charges can be levied to *directly* affect specific individuals' behaviour, as was the case in *Re Ottawa-Carleton*, where a municipality levied a per-tonne charge on landfill waste onto *individuals* to discourage *their* waste production. Concurrently, behaviours can also be encouraged, as in *Cape Breton*, where deposit-refund charges were levied on *purchasers* of bottles to encourage recycling.

> *Re Ottawa-Carleton (Regional Municipality) By-law 234-1992*, [1996] OMBD No. 553 [*Re Ottawa-Carleton*].
>
> *Cape Breton Beverages Ltd v Nova Scotia (Attorney General)* (1997), 144 DLR (4th) 536 (NSSC), 1997 CarswellNS 100 [*Cape Breton*].

84 However, the Charge's regulatory purpose is contingent on the levy passing down from registered distributers to consumers and businesses. By increasing the Charge rate on registered distributors, the added cost passed onto consumers would purportedly discourage fuel consumption. Consequently, the Charge would incentivize GHG emitters to reduce their emissions and thereby lower the levy imposed on them

85 Affecting consumer and business behaviour is therefore ancillary to Part 1's purpose at best. The levy is premised on an action that Parliament does not itself directly control. To discourage consumption behaviour directly, Parliament could instead charge consumers when they purchase fossil fuels instead; it did not do so.

86 The principal focus of the Charge is generating revenue, which does not serve a regulatory purpose. By raising revenues from Canadians *indirectly*, the purpose of the Charge is not to discourage fossil fuel consumption behaviour, but instead is to increase costs for registered distributors.

87 Part 1's lack of regulatory purpose is demonstrated by the way the Minister distributes the collected revenues from the Charge. The Minister does not need to invest Charge revenues in any form of GHG emissions reductions at all, even though Parliament's goal is to reduce GHG emissions.

88 Under section 165(2) of the *GGPPA*, the Minister may distribute net revenues to listed provinces, prescribed persons in listed provinces, or both, yet does not provide conditions on

how to spend revenues. The revenues are more effectively characterized as expenditures for "general purposes" (i.e., a tax). The SCC has never authorized using regulatory charge revenues for such "general purposes".

(iv) Part 1 does not detail the estimated regulatory costs

89 If a relevant scheme exists, then the Court must identify a "relationship between the charge and the scheme itself" (*620 Connaught*). This exists "when the revenues are tied to the costs of the regulatory scheme, or where the charges themselves have a regulatory purpose" (*Westbank*). In *Allard,* the revenues raised by the levy in that scheme both covered the costs of scheme itself and the costs associated to the regulation of the gravel and soil extraction and removal trade.

> *620 Connaught*, *supra* para 77 at para 27.
> *Westbank*, *supra* para 76 at para 44.
> *Allard*, *supra* para 80 at para 78.

90 Part 1 has no nexus between the costs of administering the Charge and the generated revenue. While the costs to administer the Charge are fixed, Parliament will continually increase the levy, with an ever-growing surplus. Part 1 exemplifies the principle that "a significant or systematic surplus above the cost of the regulatory scheme would be inconsistent with a regulatory charge and would [instead] be a strong indication that the levy [is] in pith and substance a tax" (*620 Connaught*). This systematic surplus points to a tax, not a regulatory scheme.

> *620 Connaught*, *supra* para 77 at para 40.

(v) Part 1 does not establish a clear relationship between the person being regulated and the regulation

91 While the *GGPPA* aims discourage GHGs emitted by consumers and businesses, the Charge applies to registered distributors instead. Parliament hopes that by charging the levy to registered distributors, the additional costs pass onto consumers and businesses, thereby discouraging fuel consumption behaviour. No clear connection exists between the persons whom the *GGPPA* purports to regulate and the Charge itself.

92 Registered distributors of GHGs neither cause the need for, nor benefit from, the Charge. The demand for fuel from consumers and businesses creates the need for the Charge, not the registered distributors themselves.

93 Contrary to the impugned legislation in *620 Connaught,* registered distributors do not benefit from the Charge. In *620 Connaught*, businesses within Jasper National Park were subject to business license fees to sell alcoholic beverages. These businesses benefitted from regulation because revenues from the scheme were reinvested in park maintenance. These investments attracted more visitors to the park and, ultimately, the businesses themselves. Conversely, Part 1 presents no immediate or direct benefits to either consumers, businesses or registered distributors.

620 Connaught, *supra* para 77 at para 34.

(vi) No nexus between the regulatory purpose and the Charge exists

94 The Minister does not need to expend revenues raised by the Charge in a manner connected to the regulatory purpose of the *GGPPA*. Parliament can use the revenue for general purposes or for practically any reasons at all.

95 This Court should find a nexus between a levy and a regulatory purpose, even where the levy's purpose is behaviour change. In *Westbank*, the Court held that a nexus between the regulation and its purpose is not required when the levy serves a behavioural purpose and where the levy is the scheme itself.

Westbank, supra para 76 at para 44.

96 However, the SCC in *620 Connaught* did not address whether governments can use revenues raised from behavioural-related levies for any reason whatsoever. If such a weak nexus was sufficient to salvage the Charge as a regulatory scheme, then governments could also raise funds for general purposes by levying other "tax-like" charges on other behaviours without express legislative authority.

97 This view defeats the entire purpose of establishing regulatory schemes in the first place. Consider a scenario where the federal government raises levies individuals for licenses under the *Fisheries Act, 1985* (RSC, 1985, c F-14). However, instead of investing revenues into fisheries-related purposes, the funds are invested in an unrelated manner, such as developing nuclear facilities. The levy in this case is a tax because no nexus exists between the charge and the purpose of influencing fishing-related behaviour.

98 Like Part 1, the above example attempts to change behaviour, but the government does not need to spend the revenues raised from the levy in a way that encourages the regulation's desired behavioural change in the first place. Accordingly, for behavioural regulatory schemes, the nexus requirement should not be met solely based on the Charge being the scheme itself.

(vii) Part 1 violates section 53 of the Constitution

99 If properly characterized as a tax, the Charge would violate section 53 of the *Constitution Act, 1867*, which provides that:

> Bills for appropriating any Part of the Public Revenue, or for imposing any Tax or Impost, shall originate in the House of Commons.
>
> *Constitution Act, 1867*, *supra* para 42 at s 53.

100 The SCC dealt with this principle in *Eurig Estate* and took the position that section 53 imposes a "constitutional requirement for a clear and unambiguous authorization of taxation within the enabling statute". The Charge violates this "no taxation without representation" principle. Neither the *GGPPA*'s purpose nor the Charge legislation makes express reference to the delegation of taxing authority, an invalid exercise of Parliament's taxation power.

> *Eurig Estate (Re)*, [1998] 2 SCR 565 at para 90 165 DLR (4th) 1 [*Eurig Estate*].

101 Sections 166 and 168 authorize the GIC to amend and override Charge legislation, including its rate and area of provincial application, by its own edict. Under subsection 168(4), the GIC is authorized to take actions contrary to any provision in Part 1 because the regulations prevails over any conflicts with legislation. Aggravating this, sections 166(2) and (4) authorize the GIC to amend the terms of the *GGPPA* itself with unfettered discretion outside of Parliament. In circumventing Parliament, these provisions violate section 53 of the *Constitution Act, 1867*.

102 The powers given to the GIC confirm that the Charge is an unconstitutional discretionary tax without bounds and violates section 53 of the Constitution and fundamental constitutional principles.

PART IV -- SUBMISSIONS IN SUPPORT OF COSTS

103 The Appellants are not seeking costs in this appeal.

PART V -- ORDER SOUGHT

104 The Appellants submit that the appeal be allowed and that the court answer the reference questions as follows: the *GGPPA* is as a whole *ultra vires* and the fuel charge under Part 1 is *ultra vires* Parliament as valid regulatory charge or tax."

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 24 day of January, 2022.

[redacted]

[redacted]

Counsel for the Appellants
Attorney General of Alberta,
Attorney General of Saskatchewan and
Attorney General of Ontario

PART VI -- TABLE OF AUTHORITIES

Jurisprudence	**Paragraph No**
620 Connaught Ltd v Canada (Attorney General), 2008 SCC 7.	77, 89, 90, 93, 96.
Allard Contractors Ltd v Coquitlam (District), [1993] 4 SCR 371, 109 DLR (4th) 46.	80, 89.
Bell Canada v. Quebec (Commission de la santé et de la sécurité du travail), [1988] 1 SCR 749, 51 DLR (4th) 161.	59.
Cape Breton Beverages Ltd v Nova Scotia (Attorney General) (1997), 144 DLR (4th) 536 (NSSC), 1997 CarswellNS 100.	83.
Chatterjee v Ontario (Attorney General), 2009 SCC 19.	34.
Eurig Estate (Re), [1998] 2 SCR 565, 165 DLR (4th) 1.	100.
Friends of the Oldman River Society v Canada (Minister of Transport), [1992] 1 SCR 3, 88 DLR (4th) 1.	69.
Housen v Nikolaisen, 2002 SCC 33.	24.
Johannesson v Municipality of West St Paul, [1952] 1 SCR 292, [1951] 4 DLR 609.	57.
Ontario Home Builders' Association v York Region Board of Education, [1996] 2 SCR 929, 137 DLR (4th) 449.	80.
Ontario Hydro v Ontario (Labour Relations Board), [1993] 3 SCR 327, 107 DLR (4th) 457.	57.
Quebec (Attorney General) v Lacombe, 2010 SCC 38.	59.
R v Crown Zellerbach, [1988] 1 SCR 401 at 432, 49 DLR (4th) 161.	37, 52, 54, 57.
R v Hydro-Québec, [1997] 3 SCR 213, 151 DLR (4th) 32.	41, 44, 63.
Re: Anti-Inflation Act, [1976] 2 SCR 373, 68 DLR (3d) 452.	43, 44, 69.
Re Exported Natural Gas Tax, [1982] 1 SCR 1004, 136 DLR (3d) 385.	78.
Re Ottawa-Carleton (Regional Municipality) By-law 234-1992, [1996] OMBD No. 553.	83.
Reference re Firearms Act, 2000 SCC 31.	25, 29.

Government of Alberta, "Capping oil sands emissions" (2021), online: *Government of Alberta* <www.alberta.ca/climate-oilsands-emissions.aspx>.	19.
Government of Alberta, "Reducing methane emissions" (2021), online: *Government of Alberta* <www.alberta.ca/climate-methane-emissions.aspx>.	19.
Government of Alberta, "Technology Innovation and Emissions Reduction Regulation" (2021), online: *Government of Alberta* <www.alberta.ca/technology-innovation-and-emissions-reduction-regulation.aspx>.	17.
Government of Ontario, "A Made-in-Ontario Environment Plan" (last modified 3 December 2021), online: *Government of Ontario* <www.ontario.ca/page/made-in-ontario-environment-plan#section-5>.	20.
Government of Saskatchewan, "Prairie Resilience: A Made-in-Saskatchewan Climate Change Strategy" (2017), online: *Government of Saskatchewan* <www.saskatchewan.ca/business/environmental-protection-and-sustainability/a-made-in-saskatchewan-climate-change-strategy/saskatchewans-climate-change-strategy>.	20.
Hogg, Peter W, "Constitutional Authority over Greenhouse Gas Emissions" (2009) 46:2 Alta L Rev 507.	41.
Lysyk, Kenneth, "The Constitutional Reform and the Introductory Clause of Section 91: Residual and Emergency Law-Making Authority" (1979) 57 Can Bar Rev 531.	43.
Paris Agreement, 12 December 2015, UN Doc FCCC/CP/2015/10/Add.1.	6, 7.
Specific Mitigation Opportunities Working Group, "Final Report" (2016), online (pdf): *Canada* <www.canada.ca/content/dam/eccc/migration/cc/content/6/4/7/64778dd5-e2d9-4930-be59-d6db7db5cbc0/wg_report_specific_mitigation_opportunities_en_v04.pdf>.	11.
Vancouver Declaration on clean growth and climate change, March 3, 2016, online: *Canadian Intergovernmental Conference Secretariat* <www.scics.ca/en/product-produit/vancouver-declaration-on-clean-growth-and-climate-change>.	7, 8, 9.

Working Group on Carbon Pricing Mechanisms, "Final Report" (2016), online (pdf): *Government of Canada* <www.canada.ca/content/dam/eccc/migration/cc/content/6/4/7/64778dd5-e2d9-4930-be59-d6db7db5cbc0/wg_report_carbon-20pricing_e_v4.pdf>.	10.

ATTORNEY GENERAL OF ALBERTA, ATTORNEY GENERAL OF SASKATCHEWAN and ATTORNEY GENERAL OF ONTARIO
APPELLANTS
(Appellants)

-and-

ATTORNEY GENERAL OF CANADA

RESPONDENT
(Respondent)

S.E.M.C.C. File Number: 03-04-2022

SUPREME ENVIRONMENTAL MOOT
COURT OF CANADA

FACTUM OF THE APPELLANTS ATTORNEY GENERAL OF ALBERTA, ATTORNEY GENERAL OF SASKATCHEWAN and ATTORNEY GENERAL OF ONTARIO

TEAM #2022-11

[redacted]

Counsel for the Appellants,
Attorney General of Alberta, Attorney General of Saskatchewan and Attorney General of Ontario

Document #: 2090791