

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE SASKATCHEWAN COURT OF APPEAL)**

IN THE MATTER OF THE *GREENHOUSE GAS POLLUTION PRICING ACT*, BILL C-74, PART V

AND IN THE MATTER OF A REFERENCE BY THE LIEUTENANT GOVERNOR IN COUNCIL TO THE COURT OF APPEAL UNDER THE *CONSTITUTIONAL QUESTIONS ACT, 2012*, SS 2012, c. C-29.01.

BETWEEN:

ATTORNEY GENERAL OF SASKATCHEWAN

APPELLANT

-and-

ATTORNEY GENERAL OF CANADA

RESPONDENT

(Style of Cause continued on next page)

FACTUM OF THE INTERVENERS

(CANADIAN ENVIRONMENTAL LAW ASSOCIATION, ENVIRONMENTAL DEFENCE CANADA INC., AND SISTERS OF PROVIDENCE OF ST. VINCENT DE PAUL)

(Pursuant to Rule 42 of the Rules of the Supreme Court of Canada)

**CANADIAN ENVIRONMENTAL LAW
ASSOCIATION**
1500 - 55 University Avenue
Toronto, Ontario M5J 2H7

GOWLING WLG (CANADA) LLP
Suite 2600, 160 Elgin Street
Ottawa, Ontario K1P 1C3

**Joseph F. Castrilli / Theresa McClenaghan
Richard D. Lindgren**
Tel: (416) 960-2284, ext. 7218/7219/7214
Fax: (416) 960-9392
Email: castrillij@sympatico.ca
theresa@cela.ca
r.lindgren@sympatico.ca

Jeffrey W. Beedell
Tel: (613) 786-0171
Fax: (613) 563-9869
Email: jeff.beedell@gowlingwlg.com

**Counsel for the Intervenors,
Canadian Environmental Law Association,
Environmental Defence Canada Inc., and
Sisters of Providence of St. Vincent de Paul**

**Ottawa Agent for Counsel for the Intervenors
Canadian Environmental Law Association,
Environmental Defence Canada Inc., and
Sisters of Providence of St. Vincent de Paul**

-and-

**ATTORNEY GENERAL OF ONTARIO, ATTORNEY GENERAL OF QUEBEC
ATTORNEY GENERAL OF NEW BRUNSWICK, ATTORNEY GENERAL OF
MANITOBA, ATTORNEY GENERAL OF BRITISH COLUMBIA
ATTORNEY GENERAL OF ALBERTA, PROGRESS ALBERTA COMMUNICATIONS
LIMITED, CANADIAN LABOUR CONGRESS, SASKATCHEWAN POWER
CORPORATION AND SASKENERGY INCORPORATED, OCEANS NORTH
CONSERVATION SOCIETY, ASSEMBLY OF FIRST NATIONS, CANADIAN
TAXPAYERS FEDERATION, CANADA'S ECOFISCAL COMMISSION, CANADIAN
ENVIRONMENTAL LAW ASSOCIATION, ENVIRONMENTAL DEFENCE CANADA
INC., SISTERS OF PROVIDENCE OF ST. VINCENT DE PAUL, AMNESTY
INTERNATIONAL CANADA, NATIONAL ASSOCIATION OF WOMEN AND THE
LAW AND FRIENDS OF THE EARTH, INTERNATIONAL EMISSIONS TRADING
ASSOCIATION, DAVID SUZUKI FOUNDATION, ATHABASCA CHIPEWYAN FIRST
NATION, SMART PROSPERITY INSTITUTE, CANADIAN PUBLIC HEALTH
ASSOCIATION, CLIMATE JUSTICE SASKATOON, NATIONAL FARMERS UNION,
SASKATCHEWAN COALITION FOR SUSTAINABLE DEVELOPMENT,
SASKATCHEWAN COUNCIL FOR INTERNATIONAL COOPERATION,
SASKATCHEWAN ENVIRONMENTAL SOCIETY, SASKEV, COUNCIL OF
CANADIANS: PRAIRIE AND NORTHWEST TERRITORIES REGION, COUNCIL OF
CANADIANS: REGINA CHAPTER, COUNCIL OF CANADIANS: SASKATOON
CHAPTER, NEW BRUNSWICK ANTI-SHALE GAS ALLIANCE AND YOUTH OF THE
EARTH, CENTRE QUÉBÉCOIS DU DROIT DE L'ENVIRONNEMENT ET
ÉQUITERRE, GENERATION SQUEEZE, PUBLIC HEALTH ASSOCIATION OF
BRITISH COLUMBIA, SASKATCHEWAN PUBLIC HEALTH ASSOCIATION,
CANADIAN ASSOCIATION OF PHYSICIANS FOR THE ENVIRONMENT,
CANADIAN COALITION FOR THE RIGHTS OF THE CHILD AND YOUTH
CLIMATE LAB, ASSEMBLY OF MANITOBA CHIEFS, CITY OF RICHMOND, CITY
OF VICTORIA, CITY OF NELSON, DISTRICT OF SQUAMISH, CITY OF ROSSLAND
AND CITY OF VANCOUVER**

INTERVENERS

(Style of Cause continued on next page)

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)**

**IN THE MATTER OF THE *GREENHOUSE GAS POLLUTION PRICING ACT*, SC 2018,
c. 12, s. 186**

**AND IN THE MATTER OF A REFERENCE BY THE LIEUTENANT GOVERNOR IN
COUNCIL TO THE COURT OF APPEAL FOR ONTARIO UNDER THE *COURTS OF
JUSTICE ACT*, RSO 1990, c. C.43, s. 8**

AND BETWEEN:

ATTORNEY GENERAL OF ONTARIO

APPELLANT

-and-

ATTORNEY GENERAL OF CANADA

RESPONDENT

-and-

**ATTORNEY GENERAL OF QUEBEC, ATTORNEY GENERAL OF NEW
BRUNSWICK, ATTORNEY GENERAL OF MANITOBA
ATTORNEY GENERAL OF BRITISH COLUMBIA, ATTORNEY GENERAL OF
SASKATCHEWAN, ATTORNEY GENERAL OF ALBERTA, PROGRESS ALBERTA
COMMUNICATIONS LIMITED, ANISHINABEK NATION AND UNITED CHIEFS
AND COUNCIL OF MNIDOO MNISING, CANADIAN LABOUR CONGRESS,
SASKATCHEWAN POWER CORPORATION AND SASKENERGY INCORPORATED,
OCEANS NORTH CONSERVATION SOCIETY, ASSEMBLY OF FIRST NATIONS,
CANADIAN TAXPAYERS FEDERATION, CANADA'S ECOFISCAL COMMISSION,
CANADIAN ENVIRONMENTAL LAW ASSOCIATION, ENVIRONMENTAL
DEFENCE CANADA INC., SISTERS OF PROVIDENCE OF ST. VINCENT DE PAUL,
AMNESTY INTERNATIONAL CANADA, NATIONAL ASSOCIATION OF WOMEN
AND THE LAW AND FRIENDS OF THE EARTH, INTERNATIONAL EMISSIONS
TRADING ASSOCIATION, DAVID SUZUKI FOUNDATION, ATHABASCA
CHIPEWYAN FIRST NATION, SMART PROSPERITY INSTITUTE, CANADIAN
PUBLIC HEALTH ASSOCIATION, CLIMATE JUSTICE SASKATOON, NATIONAL
FARMERS UNION, SASKATCHEWAN COALITION FOR SUSTAINABLE
DEVELOPMENT, SASKATCHEWAN COUNCIL FOR INTERNATIONAL
COOPERATION, SASKATCHEWAN ENVIRONMENTAL SOCIETY, SASKEV,
COUNCIL OF CANADIANS: PRAIRIE AND NORTHWEST TERRITORIES REGION,
COUNCIL OF CANADIANS: REGINA CHAPTER, COUNCIL OF CANADIANS:**

**SASKATOON CHAPTER, NEW BRUNSWICK ANTI-SHALE GAS ALLIANCE AND
YOUTH OF THE EARTH, CENTRE QUÉBÉCOIS DU DROIT DE
L'ENVIRONNEMENT ET ÉQUITERRE, GENERATION SQUEEZE, PUBLIC
HEALTH ASSOCIATION OF BRITISH COLUMBIA, SASKATCHEWAN PUBLIC
HEALTH ASSOCIATION, CANADIAN ASSOCIATION OF PHYSICIANS FOR THE
ENVIRONMENT, CANADIAN COALITION FOR THE RIGHTS OF THE CHILD AND
YOUTH CLIMATE LAB, ASSEMBLY OF MANITOBA CHIEFS, CITY OF
RICHMOND, CITY OF VICTORIA, CITY OF NELSON, DISTRICT OF SQUAMISH,
CITY OF ROSSLAND AND CITY OF VANCOUVER**

INTERVENERS

ORIGINAL TO: THE REGISTRAR

COPIES TO:

**MINISTRY OF JUSTICE
AND ATTORNEY GENERAL
OF SASKATCHEWAN**
820-1874 Scarth Street
Regina, Saskatchewan S4P 4B3

P. Mitch McAdam, Q.C.

Alan Jacobson

Deron Kuski, Q.C.

Jodi Wildman

Tel: (306) 787-7846

Fax: (306) 787-9111

Email: mitch.mcadam@gov.sk.ca

alan.jacobson@gov.sk.ca

dkuski@mltaikins.com

jwildman@mltaikins.com

**Counsel for the Appellant/Intervener,
Attorney General of Saskatchewan**

GOWLING WLG (CANADA)

LLP

Barristers & Solicitors

2600-160 Elgin Street

Ottawa, Ontario K1P 1C3

D. Lynne Watt

Tel: (613) 786-8695

Fax : (613) 788-3509

Email: lynne.watt@gowlingwlg.com

**Ottawa Agent for Counsel for the
Appellant/Intervener, Attorney General
of Saskatchewan**

**ATTORNEY GENERAL OF
ONTARIO**

Constitutional Law Branch
720 Bay Street, 4th Floor
Toronto, Ontario M7A 2S9

Joshua Hunter

Padraic Ryan

Aud Ranalli

Tel: (416) 908-7465

Fax: (416) 326-4015

Email: joshua.hunter@ontario.ca
padraic.ryan@ontario.ca
aud.ranalli@ontario.ca

**Counsel for the Appellant/Intervener,
Attorney General of Ontario**

**ATTORNEY GENERAL OF
CANADA**

Department of Justice Canada
Prairie Regional Office
(Winnipeg)
301-310 Broadway Avenue
Winnipeg, Manitoba R3C 0S6

Sharlene Telles-Langdon

Christine Mohr

Mary Matthews

Neil Goodridge

Brooke Sittler

Ned Djordjevic

Tel: (204) 983-0862

Fax: (204) 984-8495

Email: sharlene.telles-langdon@justice.gc.ca

**Counsel for the Respondent,
Attorney General of Canada**

SUPREME ADVOCACY LLP

100 - 340 Gilmour Street
Ottawa, Ontario K2P 0R3

Marie-France Major

Tel: (613) 695-8855, Ext. 102

Fax: (613) 695-8560

Email: mfmajor@supremeadvocacy.ca

**Ottawa Agent for Counsel for the
Appellant/Intervener, Attorney General of
Ontario**

**DEPARTMENT OF JUSTICE
DEPUTY ATTORNEY GENERAL
OF CANADA**

50 O'Connor Street - Suite 500
Ottawa, Ontario K1A 0H8

Christopher M. Rupar

Tel: (613) 670-6290

Fax: (613) 954-1920

Email: christopher.rupar@justice.gc.ca

**Ottawa Agent for Counsel for the Respondent,
Attorney General of Canada**

**PROCUREURE GÉNÉRALE DU
QUÉBEC**

Ministère de la justice du Québec
1200 Route de l'Église, 4e étage
Québec, Québec G1V 4M1

**Jean-Vincent Lacroix
Laurie Anctil**

Tel: (418) 643-1477, Ext. 20779
Fax: (418) 644-7030
Email: jean-vincent.lacroix@justice.gouv.qc.ca

**Avocats de l'Intervenante,
la Procureure générale du Québec**

**ATTORNEY GENERAL OF
NEW BRUNSWICK**

675 King Street, Suite 2018
PO Box 6000, Stn. A
Fredericton, New Brunswick E3B 5H1

**Isabel Lavoie-Daigle
Rachelle Standing**

Tel: (506) 453-2222
Fax: (506) 453-3275
Email: isabel.lavoiedaigle@gnb.ca
rachelle.standing@gnb.ca

**Counsel for the Intervener,
Attorney General of New Brunswick**

NOËL & ASSOCIÉS

111, rue Champlain
Gatineau, Québec J8X 3R1

Pierre Landry

Tel: (819) 503-2178
Fax: (819) 771-5397
Email: p.landry@noelassocies.com

**Correspondant pour les avocats de
l'Intervenante, la Procureure générale du
Québec**

**GOWLING WLG (CANADA)
LLP**

Barristers & Solicitors
2600-160 Elgin Street
Ottawa, Ontario K1P 1C3

D. Lynne Watt

Tel: (613) 786-8695
Fax: (613) 788-3509
Email: lynne.watt@gowlingwlg.com

**Ottawa Agent for Counsel for the Intervener,
Attorney General of New Brunswick**

**ATTORNEY GENERAL OF
MANITOBA**

Constitutional Law
1230 – 405 Broadway
Winnipeg, Manitoba R3C 3L6

Michael Conner

Allison Kindle Pejovic

Tel: (204) 945-6723

Fax: (204) 945-0053

Email: michael.conner@gov.mb.ca

**Counsel for the Intervener,
Attorney General of Manitoba**

**ATTORNEY GENERAL OF
BRITISH COLUMBIA**

1001 Douglas Street, 6th Floor
PO Box 9280 Stn Prov Govt
Victoria, British Columbia V8W 9J7

J. Gareth Moreley

Tel: (250) 952-7644

Fax: (250) 356-9154

Email: gareth.morley@gov.bc.ca

**Counsel for the Intervener,
Attorney General of British
Columbia**

**GALL LEGGE GRANT
ZWACK LLP**

1199 West Hastings Street
Suite 1000
Vancouver, British Columbia V6E 3T5

Peter A. Gall, Q.C.

Tel: (604) 891-1152

Fax: (604) 669-5101

Email: pgall@ggzlaw.com

**Counsel for the Intervener,
Attorney General of Alberta**

GOWLING WLG (CANADA) LLP

Barristers & Solicitors
2600-160 Elgin Street
Ottawa, Ontario K1P 1C3

D. Lynne Watt

Tel: (613) 786-8695

Fax: (613) 788-3509

Email: lynne.watt@gowlingwlg.com

**Ottawa Agent for Counsel for the Intervener,
Attorney General of Manitoba**

MICHAEL J. SOBKIN

331 Somerset Street West
Ottawa, Ontario K2P 0J8

Michael J. Sobkin

Tel: (613) 282-1712

Fax: (613) 288-2896

Email: msobkin@sympatico.ca

**Ottawa Agent for Counsel for the Intervener,
Attorney General of British Columbia**

CAZASAIKALEY LLP

350 – 220 avenue Laurier Ouest
Ottawa, ON K1P 5Z9

Alyssa Tomkins

Tel: (613) 565-2292

Fax: (613) 565-2087

Email: atomkins@plaideurs.ca

**Ottawa Agent for Counsel for the Intervener,
Attorney General of Alberta**

NANDA & COMPANY
3400 Manulife Place
10180 – 101 Street N.W.
Edmonton, Alberta T5J 4K1

Avnish Nanda
Martin Olszynski
Tel: (708) 801-5324
Fax: (587) 318-1391
Email: avnish@nandalaw.ca

**Counsel for the Intervener,
Progress Alberta Communications
Limited**

WESTAWAY LAW GROUP
55 Murray Street, Suite 230
Ottawa, Ontario K1N 5M3

Cynthia Westaway
M. Patricia Lawrence
Tel: (613) 722-6339
Fax: (613) 722-9097
Email: cynthia@westawaylaw.ca

**Counsel for the Intervener,
Anishinabek Nation and United
Chiefs and Councils of Mnidoo
Mnising**

GOLDBLATT PARTNERS LLP
20 Dundas Street West, Suite 1039
Toronto, Ontario M5G 2C2

Steven M. Barrett
Simon Archer
Mariam Moktar
Tel: (416) 977-6070
Fax: (416) 591-7333
Email: sbarrett@goldblattpartners.com

**Counsel for the Intervener,
Canadian Labour Congress**

MCGUINTY LAW OFFICES
1192 Rockingham Avenue
Ottawa, Ontario K1H 8A7

Dylan Jr. McGuinty
Tel: (613) 526-3858
Fax: (613) 526-3187
Email: dylanjr@mcguintylaw.ca

**Ottawa Agent for Counsel for the Intervener,
Progress Alberta Communications Limited**

WESTAWAY LAW GROUP
55 Murray Street, Suite 230
Ottawa, Ontario K1N 5M3

Geneviève Boulay
Tel: (613) 702-3042
Fax: (613) 722-9097
Email: genevieve@westawaylaw.ca

**Ottawa Agent for Counsel for the Intervener,
Anishinabek Nation and United Chiefs and
Councils of Mnidoo Mnising**

GOLDBLATT PARTNERS LLP
500-30 Metcalfe Street
Ottawa, Ontario K1P 5L4

Colleen Bauman
Tel: (613) 482-2463
Fax: (613) 235-3041
Email: cbauman@goldblattpartners.com

**Ottawa Agent for Counsel for the Intervener,
Canadian Labour Congress**

MCKERCHER LLP

374 Third Avenue South
Saskatoon, Saskatchewan S7K 1M5

David M. A. Stack, Q.C.

Tel: (306) 664-1277
Fax: (306) 653-2669
Email: d.stack@mckercher.ca

**Counsel for the Intervener,
Saskatchewan Power Corporation
and SaskEnergy Incorporated**

ARVAY FINLAY LLP

1512-808 Nelson Street
Vancouver, British Columbia V6Z 2H2

David W.L. Wu

Tel: (604) 696-9828
Fax: (888) 575-3281
Email: dwu@arvayfinlay.ca

**Counsel for the Intervener,
Oceans North Conservation Society**

ASSEMBLY OF FIRST NATIONS

55 Metcalfe Street, Suite 1600
Ottawa, Ontario K1P 6L5

**Stuart Wuttke
Julie McGregor
Adam Williamson
Victor Carter**

Tel: (613) 241-6789, Ext: 228
Fax: (613) 241-5808
Email: swuttke@afn.ca

**Counsel for the Intervener,
Assembly of First Nations**

GOWLING WLG (CANADA) LLP

Barristers & Solicitors
2600-160 Elgin Street
Ottawa, Ontario K1P 1C3

D. Lynne Watt

Tel: (613) 786-8695
Fax: (613) 788-3509
Email: lynne.watt@gowlingwlg.com

**Ottawa Agent for Counsel for the Intervener,
Saskatchewan Power Corporation and
SaskEnergy Incorporated**

SUPREME LAW GROUP

900 – 275 Slater Street
Ottawa, Ontario K1P 5H9

Moira Dillon

Tel: (613) 691-1224
Fax: (613) 691-1338
Email: mdillon@supremelawgroup.ca

**Ottawa Agent for Counsel for the Intervener,
Oceans North Conservation Society**

SUPREME LAW GROUP

900 – 275 Slater Street
Ottawa, Ontario K1P 5H9

Moira Dillon

Tel: (613) 691-1224
Fax: (613) 691-1338
Email: mdillon@supremelawgroup.ca

**Ottawa Agent for Counsel for the Intervener,
Assembly of First Nations**

CREASE HARMAN LLP
1070 Douglas Street, Unit 800
Victoria, British Columbia V8W 2C4

R. Bruce E. Hallsor
Hana Felix
Tel: (250) 388-9124
Fax: (250) 388-4294
Email: bhallsor@crease.com

**Counsel for the Intervener,
Canadian Taxpayers Federation**

**UNIVERSITY OF OTTAWA,
FACULTY OF LAW**
57 Louis Pasteur Street
Ottawa, Ontario K1N 6N5

Stewart Elgie, LSM
Tel: (613) 562-5800 x 1270
Fax: (613) 564-5124
Email: stewart.elgie@uottawa.ca

**Counsel for the Intervener,
Canada's Ecofiscal Commission**

STOCKWOODS LLP
TD North Tower, Suite 4130
77 King Street West, P.O. Box 140
Toronto, Ontario M5K 1H1

Justin Safayeni
Zachary Al-Khatib
Tel: (416) 593-7200
Fax: (416) 593-9345
Email: justins@stockwoods.ca

**Counsel for the Intervener,
Amnesty International Canada**

SUPREME ADVOCACY LLP
100 - 340 Gilmour Street
Ottawa, Ontario K2P 0R3

Marie-France Major
Tel: (613) 695-8855, Ext. 102
Fax: (613) 695-8560
Email: mfmajor@supremeadvocacy.ca

**Ottawa Agent for Counsel for the Intervener,
Canadian Taxpayers Federation**

CHAMP AND ASSOCIATES
43 Florence Street
Ottawa, Ontario K2P 0W6

Bijon Roy
Tel: (613) 237-4740
Fax: (613) 232-2680
Email: broy@champlaw.ca

**Ottawa Agent for Counsel for the Intervener,
Canada's Ecofiscal Commission**

CONWAY BAXTER WILSON LLP
400 – 411 Roosevelt Avenue
Ottawa, Ontario K2A 3X9

David P. Taylor
Tel: (613) 691-0368
Fax: (613) 688-0271
Email: dtaylor@conway.pro

**Ottawa Agent for Counsel for the Intervener,
Amnesty International Canada**

UNIVERSITY OF OTTAWA

57 Louis Pasteur Street
Ottawa, Ontario K1N 6N5

Nathalie Chalifour

Anne Levesque

Tel: (613) 562-5800 Ext: 3331

Fax: (613) 562-5124

Email: Nathalie.chalifour@uottawa.ca

**Counsel for the Intervener,
National Association of Women and
the Law and Friends of the Earth**

DEMARCO ALLAN LLP

333 Bay Street, Suite 265
Toronto, Ontario M5H 2R2

Elisabeth DeMarco

Jonathan McGillivray

Tel: (647) 991-1190

Fax: (888) 734-9459

Email: lisa@demarcoallan.com

**Counsel for the Intervener,
International Emissions Trading
Association**

**ECOJUSTICE ENVIRONMENTAL
LAW CLINIC AT THE UNIVERSITY
OF OTTAWA**

216-1 Stewart Street
Faculty of Law – Common Law
Ottawa, Ontario K1N 6N5

Joshua Ginsberg

Randy Christensen

Tel: (613) 562-5800 Ext: 3399

Fax: (613) 562-5319

Email: jginsberg@ecojustice.ca

**Counsel for the Intervener,
David Suzuki Foundation**

CONWAY BAXTER WILSON LLP

400 – 411 Roosevelt Avenue
Ottawa, Ontario K2A 3X9

Marion Sandilands

Tel: (613) 288-0149

Fax: (613) 688-0271

Email: msandilands@conway.pro

**Ottawa Agent for Counsel for the Intervener,
National Association of Women and the Law
and Friends of the Earth**

**ECOJUSTICE ENVIRONMENTAL
LAW CLINIC AT THE UNIVERSITY
OF OTTAWA**

216-1 Stewart Street
Faculty of Law – Common Law
Ottawa, Ontario K1N 6N5

Joshua Ginsberg

Randy Christensen

Tel: (613) 562-5800 Ext: 3399

Fax: (613) 562-5319

Email: jginsberg@ecojustice.ca

**Ottawa Agent for Counsel for the Intervener,
David Suzuki Foundation**

**ECOJUSTICE ENVIRONMENTAL
LAW CLINIC AT THE UNIVERSITY
OF OTTAWA**

216-1 Stewart Street
Ottawa, Ontario K1N 6N5

Amir Attaran

Tel: (613) 562-5800 Ext: 3382
Fax: (613) 562-5319
Email: aattaran@ecojustice.ca

**Counsel for the Intervener,
Athabasca Chipewyan First Nation**

**UNIVERSITY OF OTTAWA
FACULTY OF LAW**

57 Louis Pasteur Street
Ottawa, Ontario K1N 6N5

Jeremy de Beer

Tel: (613) 562-5800 Ext: 3169
Email: jeremy.debeer@uottawa.ca

**Counsel for the Intervener,
Smart Prosperity Institute**

GOWLING WLG (CANADA) LLP

Suite 1600, 1 First Canadian Place
100 King Street West
Toronto, Ontario M5X 1G5

**Jennifer King
Michael Finley
Liane Langstaff**

Tel: (416) 862-7525
Fax: (416) 862-7661
Email: Jennifer.king@gowlingwlg.com

**Counsel for the Intervener,
Canadian Public Health Association**

**ECOJUSTICE ENVIRONMENTAL
LAW CLINIC AT THE UNIVERSITY
OF OTTAWA**

216-1 Stewart Street
Ottawa, Ontario K1N 6N5

Amir Attaran

Tel: (613) 562-5800 Ext: 3382
Fax: (613) 562-5319
Email: aattaran@ecojustice.ca

**Ottawa Agent for Counsel for the Intervener,
Athabasca Chipewyan First Nation**

GOWLING WLG (CANADA) LLP

Barristers & Solicitors
2600-160 Elgin Street
Ottawa, Ontario K1P 1C3

Guy Régimbald

Tel: (613) 786-0197
Fax: (613) 563-9869
Email: guy.regimbald@gowlingwlg.com

**Ottawa Agent for Counsel for the Intervener,
Smart Prosperity Institute**

GOWLING WLG (CANADA) LLP

Suite 2600, 160 Elgin Street
Ottawa, Ontario K1P 1C3

Jeffrey W. Beedell

Tel: (613) 786-0171
Fax: (613) 788-3587
Email: jeff.beedell@gowlingwlg.com

**Ottawa Agent for Counsel for the Intervener,
Canadian Public Health Association**

MICHEL BÉLANGER AVOCATS INC. JURISTES POWER

454 avenue Laurier Est
Montréal, Quebec H2J 1E7

130 rue Albert, bureau 1103
Ottawa, Ontario K1P 5G4

David Robitaille

Marc Bishai

Tel: (514) 991-9005

Fax: (514) 844-7009

Email: David.robitaille@uottawa.ca

Maxine Vincelette

Tel: (613) 702-5560

Fax: (613) 702-5561

Email: mvincelette@juristespower.ca

**Counsel for the Intervener,
Centre Québécois du droit de
l'environnement et Équiterre**

**Ottawa Agent for Counsel for the Intervener,
Centre Québécois du droit de l'environnement
et Équiterre**

RATCLIFF & COMPANY LLP

221 West Esplanade, Suite 500
North Vancouver, British Columbia
V7M 3J3

POWER LAW

130 Albert Street, Suite 1103
Ottawa, Ontario
K1P 5G4

Nathan Hume

Emma Hume

Cam Brewer

Tel: (604) 988-5201

Fax: (604) 988-1452

Email: nhume@ratcliff.com

Darius Bossé

Tel: (613) 702-5566

Fax: (613) 702-5566

Email: dbosse@juristespower.ca

**Counsel for the Intervener,
Generation Squeeze, Public Health
Association of British Columbia,
Saskatchewan Public Health Association,
Canadian Association of Physicians for
the Environment, Canadian Coalition for
the Rights of the Child and Youth
Climate Lab**

**Ottawa Agent for Counsel for the Intervener,
Generation Squeeze, Public Health
Association of British Columbia,
Saskatchewan Public Health Association,
Canadian Association of Physicians for
the Environment, Canadian Coalition for
the Rights of the Child and Youth Climate Lab**

PUBLIC INTEREST LAW CENTRE

200-393 Portage Avenue
Winnipeg, Manitoba R3B 3H6

Joelle Pastora Sala / Byron Williams**Katrine Dilay**

Tel: (204) 985-8540

Fax: (204) 985-8544

Email: jopas@pilc.mb.ca**Counsel for the Intervener,
Assembly of Manitoba Chiefs****LIDSTONE & COMPANY**

Sun Tower, Suite 1300
128 Pender Street West
Vancouver, British Columbia V6B 1R8

Paul A. Hildebrand / Olivia French

Tel: (604) 899-2269

Fax: (604) 899-2281

Email: hildebrand@lidstone.ca**Counsel for the Intervener,
City of Richmond, City of Victoria,
City of Nelson, District of Squamish,
City of Rossland and City of Vancouver****KOWALCHUK LAW OFFICE**

18 Patton Street
Regina, Saskatchewan S4R 3N9

Larry W. Kowalchuk

Tel: (306) 529-3001

Email: larry@kowalchuklaw.ca**Counsel for the Intervener,
Climate Justice Saskatoon, National
Farmers Union, Saskatchewan Coalition
for Sustainable Development,
Saskatchewan Council for International
Cooperation, Saskatchewan****POWER LAW**

130 Albert Street, Suite 1103
Ottawa, Ontario K1P 5G4

Maxine Vincelette

Tel: (613) 702-5560

Fax: (613) 702-5560

Email: mvincelette@powerlaw.ca**Ottawa Agent for Counsel for the Intervener,
Assembly of Manitoba Chiefs****POWER LAW**

130 Albert Street, Suite 1103
Ottawa, Ontario K1P 5G4

Maxine Vincelette

Tel: (613) 702-5560

Fax: (613) 702-5560

Email: mvincelette@powerlaw.ca**Ottawa Agent for Counsel for the Intervener,
City of Richmond, City of Victoria,
City of Nelson, District of Squamish,
City of Rossland and City of Vancouver****SUPREME LAW GROUP**

900 – 275 Slater Street
Ottawa, Ontario K1P 5H9

Moira Dillon

Tel: (613) 691-1224

Fax: (613) 691-1338

Email: mdillon@supremelawgroup.ca**Ottawa Agent for Counsel for the Intervener,
Climate Justice Saskatoon, National Farmers
Union, Saskatchewan Coalition for Sustainable
Development, Saskatchewan Council for
International Cooperation, Saskatchewan
Environmental Society, SaskEV, Council**

Environmental Society, SaskEV, Council of Canadians: Prairie and Northwest Territories Region, Council of Canadians: Regina Chapter, Council of Canadians: Saskatoon Chapter, New Brunswick Anti-Shale Gas Alliance and Youth of the Earth

TABLE OF CONTENTS

I. PART I – OVERVIEW AND STATEMENT OF FACTS	1
A. Overview.....	1
B. Statement of Facts	1
II. PART II – STATEMENT OF QUESTION AT ISSUE	2
III. PART III – STATEMENT OF ARGUMENT	2
A. Characterizing the Pith and Substance of the Act	2
1. Purpose of the Act	2
2. Legal Effects of the Act.....	3
B. Classifying the Act: Issue 1 – Are Parts 1 and 2 of the Act <i>Intra Vires</i> Parliament Based on the Criminal Law Power?	3
1. Parts 1 and 2 Have a Legitimate Criminal Law Purpose	4
2. Parts 1 and 2 Contain Prohibitions Backed by Sanctions	5
3. Parts 1 and 2 are not Colourable	8
C. Classifying the Act: Issue 2 – In the alternative, is the Act, or Part 2 thereof, <i>Intra Vires</i> Parliament Based on the Trade and Commerce Power?	10
IV. PART IV – COSTS	10
V. PART V – ORDER SOUGHT	10
VI. PART VI – TABLE OF AUTHORITIES	11

I. PART I – OVERVIEW AND STATEMENT OF FACTS

A. Overview

1. Parliament enacted the *Greenhouse Gas Pollution Pricing Act*, S.C. 2018, c. 12 (“Act” or “GGPPA”) because greenhouse gas emissions (“GHGE”) contribute to climate change, and “are at the highest level in history and present an unprecedented risk to the environment...biological diversity...human health and safety...and economic prosperity”. The Act seeks to mitigate climate change by prohibiting GHGE sources from emitting GHGs without paying a fuel charge, or emission levy, to induce change in source behavior that will lead to emission reductions. While the nature, scope, and significance of the risk posed by GHGE is not disputed by the Appellants, the within appeals challenge the constitutionality of the GGPPA.

Act; Declaration; Preamble, para 1-16; **Sask. Rec. (“SR”), Tab 1:** Saskatchewan Court of Appeal Opinion, para 4 [SCA]; **Ont. Rec. (“OR”), Tab 1:** Court of Appeal for Ontario Opinion, para 11, 55 [OCA].

2. The Act is valid criminal law. It has a legitimate criminal law purpose, is backed by prohibitions and sanctions, and is not colourable. That purpose, described above, applies to GHGs listed under the Act that also have been designated toxic substances under the *Canadian Environmental Protection Act* (“CEPA”), a law upheld by this Court as constitutionally valid under the criminal law power because of its focus on toxic substances. Alternatively, the Interveners adopt the submissions of the International Emissions Trading Association (“IETA”) regarding the validity of the Act, or Part 2 thereof, under the trade and commerce power.

Const. Act, 1867, ss. 91(27); *R. v. Hydro-Quebec*, [1997] 3 SCR 213, para 127, 130, 161; *Syncrude Canada Ltd. v. Canada (Attorney General)*, 2016 FCA 160, para 8-9, 41-42.

B. Statement of Facts

3. The Interveners adopt the facts in the opinions of the SCA, the OCA, and those in Canada’s factum, and add the following. Part 1 of the Act prohibits liquid, gas, solid fuel producers, distributors, importers, and final fuel users (carriers) in provinces that do not implement a carbon pricing system equivalent to that under the Act, from emitting GHGs without paying a charge. They must register/report monthly charges to the Canada Revenue Agency (“CRA”) and remit the charges to Canada. Intentional failure to pay the charges is punishable upon summary conviction

by a fine, imprisonment, or both. There are also prohibitions, offences and penalties for providing false information to, or failing to register, report, or provide information to, CRA.

SR, Tab 1: SCA, para 14-50; **OR, Tab 1:** OCA, para 6-53; **Can. Factum (“CF”):** para 9-22; Act, Pt 1, ss. 17-27, 28-35, 55-77, 123-140.

4. Part 2 of the Act establishes mandatory pricing for industrial facilities emitting 50 kt or more carbon dioxide (“CO₂”) equivalent GHG per year and allows other facilities to request coverage in lieu of being subjected to Part 1 charges. The pricing mechanism consists of: (1) a levy for a facility’s GHGE that exceed an annual prescribed threshold; and (2) emission credits for the quantity below the annual prescribed threshold not emitted by a facility, which can be transferred to other facilities. Environment and Climate Change Canada (“ECCC”) will establish a system to track emission credits, transfers, retirement, and cancellation of credits and levy payments for excess GHGE for facilities. Part 2’s enforcement regime is “inspired” by *CEPA*. GHGs subject to Part 2 also, with one exception, are designated toxic substances under *CEPA*.

Act, Pt 2, ss. 169-188, Sch. 3 & Sch. 4, 232-240; *CEPA*, Sch.1 (items 74-79); **Can. Record, Vol. 1, Tab 1 (“CR”)** Moffet Affidavit, January 29, 2019, para 116 [Moffet].

II. PART II – STATEMENT OF QUESTION AT ISSUE

5. Saskatchewan raises as one of the questions of law: “1. Is the [Act] unconstitutional in whole or in part”. The Interveners’ position is that the Act is *intra vires* Parliament based on: (a) the criminal law power or, alternatively; (b) the trade and commerce power (as argued by IETA).

SR, Tabs 3 and 4: Notice of Appeal, and Notice of Constitutional Question, Question 1.

III. PART III – STATEMENT OF ARGUMENT

A. Characterizing the Pith and Substance of the Act

6. The purpose and legal effect of the Act demonstrate that its pith and substance is climate change mitigation to be achieved by prohibiting GHGE sources from emitting GHGs without paying a charge or levy to induce behavioural change leading to GHGE reductions.

Act, Declaration; Preamble, para 1-16, Pt 1, ss. 17-27, 28-35, 55-77, 123-140, Pt 2, ss. 169-188, Sch. 3 & 4, 185-186, 232-240; *Reference re Firearms Act (Can.)*, [2000] 1SCR 783, para 17-18 [*Firearms*]; *Ward v. Canada (Attorney General)*, [2002] 1 SCR 569, para 17.

1. Purpose of the Act

7. The “mischief” the *GGPPA* seeks to remedy is GHGE that, unless reduced, pose an “unprecedented risk” by contributing to climate change.

Act, Declaration; Preamble, para 1-16; *Firearms*, para 17, 21.

2. Legal Effects of the Act

8. The legal effects of the Act are consistent with its purpose. The Act prohibits GHGE in the absence of paying a charge or levy. The fuel charges, and the emission levies, are designed to modify behaviour so as to reduce GHGE and mitigate climate change. The measures in Part 1 (e.g. registry) and Part 2 (e.g. emission credit system) are in aid, not of regulating property, but of contributing to the Act's purpose of protecting the environment through GHGE reductions that, if not achieved, could lead to further climate disruption.

CR: Moffet, para 6-26, 101-116; *Firearms*, para 18-19, 24, 38, 50-51; *Ward*, para 17.

9. Even if certain provisions could, in pith and substance, be viewed as outside the power of Parliament, they should still be upheld on the basis of the ancillary powers doctrine because they are connected to, and integrated with, a valid federal scheme of climate change mitigation.

Reference re Assisted Human Reproduction Act, [2010] 3 SCR 457, para 187-189 [AHRR].

B. Classifying the Act: Issue 1 – Are Parts 1 and 2 of the Act *Intra Vires* Parliament Based on the Criminal Law Power?

10. The *Constitution Act, 1867*, confers on Parliament the exclusive and plenary power to legislate in relation to criminal law. Its reach is broadly defined, not “frozen in time”, stands on its own as federal jurisdiction, and is not restricted to the *Criminal Code*, R.S.C. 1985, c. C-46.

Const. Act, 1867, s. 91(27); *Hydro-Quebec*, para 119-122, 161; *Firearms*, para 28-29.

11. The criminal law power is also preventive. In this respect, it is consistent with international law's precautionary principle that Canada has a mandate in law to act in accord with, which requires it to “anticipate, prevent and attack the causes of environmental degradation”. The *GGPPA*, like the precautionary principle, aims to prevent environmental ills that pose threats of serious or irreversible damage, an approach consistent with the criminal law.

RJR-MacDonald Inc. v. Canada (Attorney General), [1995] 3 SCR 199, para 41; *114957 Canada Ltee (Spraytech Soci t  d'arrosage) v. Hudson (Town)*, [2001] 2 SCR 241, para 30-32; *Castonguay Blasting Ltd. v. Ontario (Environment)*, [2013] 3 SCR 323, para 20; Charles Cote, “Applying International Law to Canadian Environmental Law”, *Symposium on Environment in the Courtroom: Key Environmental Concepts and the Unique Nature of Environmental Damage*, Calgary (2012), 1, 8.

12. The Act is valid criminal law because it: (1) is founded on a “legitimate public purpose” associated with an “evil” Parliament seeks to suppress, or with threatened interests it seeks to safeguard; (2) stipulates a prohibition combined with a sanction; and (3) does not colourably invade areas of exclusively provincial legislative competence.

Hydro-Quebec, para 119, 121, 123; *AHRR*, para 233, 235; **CR**: Moffet, para 6, 8, 17-26, 101-116; Act, Declaration, Preamble, para 1-16, ss. 132-137, 232-249.

1. Parts 1 and 2 Have a Legitimate Criminal Law Purpose

13. The substantive component of the definition of criminal law requires as an essential element a real evil and a reasonable apprehension of harm; an injurious or undesirable effect upon the public. *Hydro-Quebec* recognized environmental protection as a criminal law purpose because “pollution is an evil” Parliament can legitimately seek to suppress. It is a public purpose of superordinate importance recognized as a legitimate basis for criminal laws on toxic substances, GHGE, and species at risk. In short, pollution is an undesirable new reality.

RJR-MacDonald, para 28; *AHRR*, para 232, 234-235, 237, 240, 248-251; *Hydro-Quebec*, para 85, 121, 123; *Syncrude*, para 8-9, 41-42, 49, 51, 62; *Groupe Maison Candiac Inc. v. Canada (Attorney General)*, 2018 FC 643, para 110, 114-116, 118.

14. The characterization of the Act’s pith and substance, noted above, is consistent with suppressing an “evil”. In exercising its criminal law power, Parliament can “determine what evil it wishes by penal prohibition to suppress and what threatened interest it thereby wishes to safeguard”. “Stewardship of the environment is a fundamental value...and...Parliament may use its criminal law power to underline that value...and keep pace with and protect our emerging values”. In these appeals, the evil addressed by the Act is climate change-inducing GHGE requiring mitigation. In the *Saskatchewan Carbon Reference* the SCA, though it found the Act did not turn on prohibitions and penalties, a finding disputed below by the Interveners, did find that arguments for the Act’s constitutionality based on the criminal law power are “by no means devoid of merit” and “it might be possible to see the Act as having a valid criminal law purpose...”.

Act, Declaration, Preamble, para 1-16, ss. 17-27, 28-35, 55-77, 165, 123-140, 169-188, Sch. 3 & 4, 232-240; *Hydro-Quebec*, para 119, 123-125, 127; **SR, Tab 1**: SCA, para 191, 198.

15. In *Syncrude*, a criminal law purpose in protecting the environment from GHGE was found for a federal regulation under *CEPA* that required diesel fuel to contain a small percentage (2%) of renewable fuel, thus reducing the burning of fossil fuels and GHGE by increasing the

consumption of renewable fuel. The court noted: “The criminal law power is not negated simply because Parliament hoped that the underlying sanction would encourage the consumption of renewable fuel and spur a demand for fuels that did not produce GHGs. All criminal law seeks to deter or modify behavior, and it remains a valid use of the power if Parliament foresees behavioural responses, either in persons or in the economy”. In short, Parliament can change economic conditions so as to reduce an evil. The charges imposed on fossil fuels in the *GGPPA* are designed to induce a similar result (behavioural change leading to GHGE reductions).

Syncrude, para 49, 61-70, 86.

16. The *GGPPA* regime is linked to the criminal law power in another way. The GHGs listed in Part 2’s Schedule 3, with one exception, since 2005 have been designated toxic substances under *CEPA*, whose focus on toxic substances was upheld in *Hydro-Quebec* under the criminal law power. *Syncrude* noted that it was uncontroverted that GHGs are harmful to both health and the environment and, as such, “constitute an evil that justifies the exercise of the criminal law power”. *CEPA* targeted a small number of toxic substances out of all substances to avoid unnecessarily broad prohibitions and their impact on provincial powers. The *GGPPA* targets a small subset of toxic substances (just GHGs) the Act’s preamble declares represent an “unprecedented risk”.

Hydro-Quebec, para 145-147, 161; *Syncrude*, para 8-9, 41-42, 62; Act, Preamble, Sch. 2&3; *CEPA*, Sch. 1 (items 74-79).

2. Parts 1 and 2 Contain Prohibitions Backed by Sanctions

17. The formal component of the definition of criminal law requires that it contain a prohibition backed by a penalty. Thus, a law is considered to fall within Parliament’s criminal law power when it stipulates a prohibition combined with a sanction, and the prohibition is founded on a “legitimate public purpose” associated with an “evil” that Parliament seeks to suppress. Parliament may also delegate to the executive branch power to define or specify conduct that could have, or be exempt from, criminal consequences, and authorize establishment of detailed, precise, and highly complex regulatory systems. These principles apply to, and exist within, the regime established in the Act.

RJR-MacDonald, para 28, 52-57; *Hydro-Quebec*, para 130, 150, 152-153; *Firearms*, para 33, 37, 39; *AHRR*, para 233-234, 237; *R. v. Furtney*, [1991] 3 SCR 89, para 31-34.

18. The prohibition need not be total to be upheld as a valid exercise of criminal law. Evil associated with: (1) tobacco has been addressed not by prohibiting tobacco consumption, but tobacco advertising; (2) firearms has been addressed not by prohibiting their possession, but their

possession without a licence; and (3) GHGs has been addressed not by totally prohibiting their presence in fuel, but by a 2 per cent renewable fuel requirement. The Act's provisions regarding fuel and emission charges under ss. 135-137, 174, 233, 240, 249 are consistent with this approach; they do not prohibit GHGE but rather they prohibit emitting GHGs without paying a charge or levy. That Parliament chose a "circuitous path" to accomplish its goal of climate change mitigation does not in any way lessen the constitutional validity of the goal.

RJR-MacDonald, para 34-44, 50-51; *Firearms*, para 39; *Syncrude*, para 71-77, 85; Act, Pt. 1, ss. 17-27, 55-77, 135-137, Sch. 2; Pt. 2, ss. 169-188, 232-240, 249, Sch. 3 & 4.

19. These propositions may be put a different way. In *RJR-MacDonald*, this Court held that Parliament can criminalize an ancillary activity without also criminalizing the underlying activity or "evil". In that case, the *Tobacco Products Control Act*, broadly prohibited all advertising and promotion of tobacco products and the sale of a tobacco product unless its package included printed health warnings. Thus, the legislative scheme targeted three categories of commercial activity: (1) advertising; (2) promotion; and (3) labelling. The law did not proscribe the sale, distribution, or use of tobacco products. This Court upheld the law as validly enacted under the criminal law power because it was clear that Parliament's purpose in criminalizing tobacco advertising and promotion was to reduce smoking, albeit by a circuitous path. Parliament did not have to prohibit tobacco manufacturing, sales, and consumption to achieve its goals. The foundation for *RJR-MacDonald* was two earlier decisions of this Court: (1) the *Prostitution Reference*, which upheld the constitutionality of a law prohibiting street solicitation, while not prohibiting prostitution itself; and (2) *Rodriguez*, which upheld the constitutionality of a law prohibiting assisted suicide, while suicide itself was not made illegal.

RJR-MacDonald, para 8, 29, 34-44, 49-51; *Reference re ss. 193 and 195.1(1)(c) of the Criminal Code (Man.) (Prostitution Reference)*, [1990] 1 SCR 1123, para 19, 93; *Rodriguez v. British Columbia (Attorney General)*, [1993] 3 SCR 519, para 154, 167, 175.

20. The SCA found *RJR-MacDonald* did not assist in upholding the *GGPPA* because "unlike the legislation at issue in *RJR-MacDonald*, the operational center of the Act does not prohibit anything. It merely attaches a cost to GHG emissions. Consumers, businesses and institutions are free to emit as they please subject only to the payment of the charges in question". In response, the Interveners submit the provisions in the *GGPPA* that prohibit GHGE without paying a charge are no different from the provisions in the *Tobacco Products Control Act* that allowed companies to

sell as much tobacco as they please so long as the sales occurred with printed health warnings. The underlying purpose of both laws is eradication of the evil (tobacco smoking; GHGE). As long as the Act has an underlying criminal law purpose of reducing GHGE, the wisdom of Parliament's method of achieving that purpose does not impact its power to legislate under criminal law.

SR, Tab 1: SCA, para 192; *RJR-MacDonald*, para 8, 43-44, 49-51.

21. The regime established under the *GGPPA* is consistent with other federal laws upheld under the criminal law power that have: (1) a registration system; or (2) eliminate provincial ability to not have any regulation of a particular subject matter. In the *Firearms Reference*, this Court affirmed that: (1) Parliament can use indirect means to achieve its ends without a total prohibition; and (2) a registration system can be integral to a law's purpose of promoting public safety.

Firearms, para 38-40, 42, 46-47, 52, 57; *Syncrude*, para 84.

22. The SCA, however, found the *Firearms Reference* did not support upholding the *GGPPA* because "the *Firearms Act* and the *Criminal Code* set out prohibitions backed by penalties. Section 112 of the *Firearms Act* prohibited the possession of a firearm without a registration certificate. Section 91 of the *Criminal Code* prohibited the possession of a firearm without a licence and a registration certificate. Again, this is different than the [*GGPPA*] where the heart of the substantive regime is not a prohibition but a charge designed to put a price on GHG emissions so as to incentivize changes in behaviour". The Interveners submit the *Firearms Reference* is analogous to the within appeals. If Parliament can prohibit possession of a firearm without a registration certificate, it can also prohibit importation, production, or distribution of GHG emitting fuels without possession of a registration as it does in ss. 55-56, 171 (with offences and penalties created under ss. 136, 137, 233, 249) of the *GGPPA*. The registration regimes of both laws have comparable criminal law purposes (promotion of public safety; mitigation of climate change by promotion of GHGE reductions). These authorities are augmented by others on reporting/providing information on fuels, and tracking, transferring, or cancelling emission credits that are tightly linked to Parliament's goal of promoting GHGE reductions because with them in place the conduct of registrants is more traceable if they emit GHGs without paying the charges.

SR, Tab 1: SCA, para 194; *Firearms*, para 38, 47, 57; *AHRR*, para 187-189.

23. Furthermore, while the SCA characterized the Act's pricing regime as being inconsistent with establishment of a system of prohibitions and penalties, the Interveners submit the Act is

consistent with other case law the court purported to distinguish. The SCA characterized the Act as seeking to ensure minimum national standards of price stringency for GHGE and, therefore, this did not constitute a prohibition type regime. However, the court noted that *Syncrude* upheld a renewable fuel regulation that prohibited sales of fuel that did not meet a prescribed renewable fuel percentage standard. The Interveners submit the Act's provisions can be characterized the same way as in *Syncrude*: (1) s. 174(1) prohibits emitting GHGs in excess of emission limits without paying compensation; (2) s. 240 makes it an offence for each tonne of GHGs emitted over the applicable emissions limit if no compensation has been paid by the applicable deadline; and (3) s. 249 authorizes prohibition orders by the court following conviction to prevent offence repetition.

SR, Tab 1: SCA, para 196-198; Act, Part 2, ss. 174, 240, 249.

24. The SCA also characterized *AHRR* as turning on whether criminal law could sustain prohibitions qualified by exceptions or subject to regulatory or licensing requirements. However, the decision not to uphold certain provisions of the statute under criminal law in that case did not turn on alleged deficiencies in the regime of prohibitions and penalties. It turned on certain provisions not meeting requirements for constituting a legitimate criminal law purpose as they sought to criminalize beneficial medical practices, not address evil. The *GGPPA* addresses an evil.

SR, Tab 1: SCA, para 195; *AHRR*, para 233-237, 250-251; Act, Preamble, para 1-2, s. 247.

25. In summary, the Act need not impose prohibitions on GHGE to be valid criminal law. Its prohibitions and penalties serve on their own a valid criminal law purpose not confined to ensuring administrative compliance with the Act's pricing regime.

RJR-MacDonald, para 50-51; *Firearms*, para 38.

3. Parts 1 and 2 are not Colourable

26. The definition of criminal law is not: (1) frozen in time; or (2) confined to what was criminal in 1867. Parliament's criminal law power includes creating new crimes, such as combines legislation that criminalized a wide array of commercial activities, price discrimination, and resale price maintenance, not previously perceived as coming within criminal law.

RJR-MacDonald, para 47.

27. Parliament could easily use criminal law to mitigate climate change and protect the environment if it had no concern for the economy; it could simply ban fossil fuel consumption.

The challenge is to protect the environment while avoiding negative economic effects. Crafting a regime to mitigate economic side effects may be the majority of the work. But even where managing economic effects plays a large role, this does not make it a colourable attempt to pursue an unconstitutional objective (if there is a legitimate criminal law purpose). Valid use of criminal law to protect the environment may have consequential economic effects. Parliament can change economic conditions, including create economic incentives, to reduce an evil and do so indirectly.

Syncrude, para 66-67, 83-84, 86, 91-93; **CR:** Moffet, para 122.

28. The Act is designed to combat “significant deleterious effects” of GHGE by prohibiting GHGE without paying a charge or levy to induce behavioural change and emission reductions, including in provinces lacking adequate, or any, pricing measures. It is not a colourable intrusion into provincial jurisdiction, either in the sense that Parliament has an improper motive or is taking over provincial powers under the guise of the criminal law. The criminal law power often affects property and civil rights. Food, drugs, consumer products, obscene materials are all property, and all legitimate subjects of criminal laws. To properly classify the Act, one must go beyond the view that carbon is property and thus federal regulation of carbon prices is unconstitutional.

Act, Preamble, para 14-16; e.g. s. 166(2)(3); **CR:** Moffet, para 65; *Firearms*, para 50, 53.

29. The legitimate use of the criminal law in no way constitutes encroachment on provincial legislative power, though it may affect matters falling within the latter’s ambit. The criminal law power also in no way precludes provinces from exercising their powers under s. 92 of the *Constitution Act, 1867* to control pollution independently or to supplement federal action.

Hydro-Quebec, para 110, 126-129, 131, 154; **SF:** para 52, 114.

30. Under the double aspect theory, even if there is duplication, if there is not actual conflict or contradiction between a valid federal and provincial law, both may operate. Where there is an operational conflict between two laws enacted on the same matter by each government level, or if there is frustration of purpose by a valid provincial law incompatible with a federal legislative purpose, federal paramountcy allows the federal law to prevail to the extent of the conflict. The Appellants do not suggest the Act conflicts with any existing or future contemplated provincial legislation.

Canadian Western Bank v. Alberta, [2007] 2 SCR 3, para 30, 69-73; *Multiple Access Ltd. v. McCutcheon*, [1982] 2 SCR 161, para 47-48; *Spraytech*, para 34-36; *Firearms*, para 52; **OR, Tab 1:** OCA, para 137.

31. Ontario agrees with Canada that climate change is: (1) real; (2) caused by human activities producing GHGE; (3) having serious effects; and (4) needs to be addressed. Ontario also says the case is not about the “relative effectiveness of particular policy alternatives”, but disagrees that carbon pricing is essential to reducing [GHGE] and states further that the Act seeks to force provinces to adopt Canada’s preferred policy – carbon pricing – even where alternative approaches not involving carbon pricing might be more effective. Saskatchewan’s position is to similar effect.

Ont. Factum (“OF”): para 1, 13, 15, 29, 37; **Sask. Factum (“SF”):** para 1, 2, 11; **OR, Tab 1:** OCA, para 55; **SR, Tab 1:** SCA, para 4.

32. On its face, the Appellants’ argument is still fundamentally about efficacy, which neither determines a law’s constitutionality, nor is relevant to a division of powers analysis. Colourability cannot be a backdoor to reconsideration of a law’s wisdom or efficacy. A high standard is required to establish colourability. It requires Parliament’s declared valid purpose to be a mere pretense for incursion into provincial jurisdiction. It is not lightly inferred and should not be in these appeals.

Syncrude, para 40, 58-60, 87-90; *Firearms*, para 18; *Ward*, para 18.

C. Classifying the Act: Issue 2 – In the alternative, is the Act, or Part 2 thereof, *Intra Vires* Parliament Based on the Trade and Commerce Power?

33. In the alternative, these Interveners adopt IETA’s trade and commerce submissions.


IV. PART IV – COSTS


34. The Interveners request no costs be awarded to or against them in respect of these appeals.


V. PART V – ORDER SOUGHT

35. The Interveners make no statement on the outcome of the appeals.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 20th DAY OF JANUARY 2020.


as agent for
Joseph F. Castrilli


as agent for
Theresa McClenaghan


as agent for
Richard D. Lindgren

Counsel for the Interveners,
Canadian Environmental Law Association,
Environmental Defence Canada Inc., and Sisters of Providence of St. Vincent de Paul

VI. PART VI – TABLE OF AUTHORITIES

	Cases	Para(s)
	<u>114957 Canada Ltee (Spraytech Societe d'arrosage) v. Hudson (Town), [2001] 2 SCR 241</u> , para 30-32, 34-36	11, 30
	<u>Canadian Western Bank v. Alberta, [2007] 2 SCR 3</u> , para 30, 69-73	30
	<u>Castonguay Blasting Ltd. v. Ontario (Environment), [2013] 3 SCR 323</u> , para 20	11
	<u>Groupe Maison Candiac Inc. v. Canada (Attorney General), 2018 FC 643</u> , para 110, 114-116, 118	13
	<u>Multiple Access Ltd. v. McCutcheon, [1982] 2 SCR 161</u> , para 47-48	30
	<u>Reference re Assisted Human Reproduction Act, [2010] 3 SCR 457</u> , para 187-189, 232-237, 240, 242, 248-251	9, 12-13, 17, 22, 24
	<u>Reference re Firearms Act (Can.), [2000] 1 SCR 783</u> , para 17-19, 21, 24, 28-29, 33, 37-40, 42, 46-47, 50-53, 57	6-8, 10, 17-18, 21-22, 25, 28, 30, 32
	<u>Reference re ss. 193 and 195.1(1)(c) of the Criminal Code (Man.) (Prostitution Reference), [1990] 1 SCR 1123</u> , para 19, 93	19
	<u>RJR-MacDonald Inc. v. Canada (Attorney General), [1995] 3 SCR 199</u> , para 8, 28-29, 34-44, 47, 49-57	11, 13, 17-20, 25-26
	<u>R. v. Furtney, [1991] 3 SCR 89</u> , para 31-34	17
	<u>R. v. Hydro-Quebec, [1997] 3 SCR 213</u> , para, 85, 110, 119-131, 145-147, 150, 152-154, 161	2, 10, 12-14, 16-17, 29
	<u>Rodriguez v. British Columbia (Attorney General), [1993] 3 SCR 519</u> , para 154, 167, 175	19
	<u>Syncrude Canada Ltd. v. Canada (Attorney General), 2016 FCA 160</u> , para 5, 8-9, 40-42, 49, 51, 58-77, 79-80, 83-93	2, 13, 15-16, 18, 21, 27, 32
	<u>Ward v. Canada (Attorney General), [2002] 1 SCR 569</u> , para 17-18	6, 8, 32

	Secondary Sources	Para(s)
	Charles Cote, “Applying International Law to Canadian Environmental Law”, Address at A Symposium on Environment in the Courtroom: Key Environmental Concepts and the Unique Nature of Environmental Damage, U. Calgary (2012), at 1, 8	11

	Legislation/Constitutional Document	Para(s)
	Greenhouse Gas Pollution Pricing Act, being Part 5 of the Budget Implementation Act, 2018, No. 1, SC 2018, c. 12, s 186; Loi sur la tarification de la pollution causée par les gaz à effet de serre, LC 2018, c 12, art 186	1, 3-4, 6-7, 12, 14, 16, 18, 23-24, 28
	Constitution Act, 1867, 30 & 31 Victoria, c. 3 (UK), s. 91(27); Loi Constitutionnelle de 1867, 30 & 31 Victoria, ch. 3 (R.U.), article 91(27)	2, 10
	Canadian Environmental Protection Act, 1999, SC 1999, c. 33, Sch. 1 (List of Toxic Substances, items 74-79 being GHG); Loi canadienne sur la protection de l’environnement (1999), L.C. 1999, ch. 33, Annexe 1, Liste des substances toxiques; les gaz à effet de serre – 74-79	4, 16