File No. 38663

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

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 SASKATCHEWAN UNDER THE *CONSTITUIONAL QUESTIONS ACT*, 2012, SS 2010, c. C-29.01

BETWEEN:

ATTORNEY GENERAL OF SASKATCHEWN

APPELLANT

-and-

ATTORNEY GENERAL OF CANADA

RESPONDENT

-and-

ATTORNEY GENERAL OF ONTARIO, ATTORNEY GENERAL OF ALBERTA, ATTORNEY GENERAL OF BRITISH COLUMBIA, ATTORNEY GENERAL OF MANITOBA, ATTORNEY GENERAL OF NEW BRUNSWICK, ATTORNEY GENERAL OF QUEBEC*

INTERVENERS

(style of cause continued on next page for SCC 38781)

FACTUM OF THE ATTORNEY GENERAL OF BRITISH COLUMBIA
(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*)

Ministry of Attorney General
6th Floor, 1001 Douglas Street
PO Box 9280 Stn Prov Govt
Victoria BC V8W 9J7
Tel: 250.952.7644 / Fax: 250.356.0064
Email: Gareth.Morley@gov.bc.ca
Jacqueline.Hughes@gov.bca.ca

J. Gareth Morley
Jacqueline Hughes
Counsel for the Intervener, Attorney General of British Columbia (SCC 38663 and SCC 38781)

Michael J. Sobkin
331 Somerset Street West
Ottawa ON K2P 0J8
Tel: 613.282.1712 / Fax: 613.288.2896
Email: msobkin@sympatico.ca

Agent for Counsel for the Intervener, Attorney General of British Columbia (SCC 38663 and SCC 38781)

File No. 38781

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE ONTARIO 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 ONTARIO COURT OF APPEAL UNDER THE *COURTS OF JUSTICE ACT*, RSO 1990, C c.34, s 8

BETWEEN:

ATTORNEY GENERAL OF ONTARIO

APPELLANT

-and-

ATTORNEY GENERAL OF CANADA

RESPONDENT

-and-

ATTORNEY GENERAL OF SASKATCHEWAN, ATTORNEY GENERAL OF ALBERTA, ATTORNEY GENERAL OF BRITISH COLUMBIA, ATTORNEY GENERAL OF MANITOBA, ATTORNEY GENERAL OF NEW BRUNSWICK, ATTORNEY GENERAL OF QUEBEC**

INTERVENERS

OTHER INTERVENERS

* For File Number SCC No. 38663**: PROGRESS ALBERTA COMMUNICATIONS; 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. AND 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; AND CITY OF RICHMOND, CITY OF VICTORIA, CITY OF NELSON, DISTRICT OF SQUAMISH, CITY OF ROSSLAND AND CITY OF VANCOUVER

** For File Number SCC No. 38781: **PROGRESS ALBERTA COMMUNICATIONS; ANISHINABEK NATION AND UNITED CHIEFS AND COUNCILS 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. AND 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; AND CITY OF RICHMOND, CITY OF VICTORIA, CITY OF NELSON, DISTRICT OF SQUAMISH, CITY OF ROSSLAND AND CITY OF VANCOUVER**

Attorney General of Saskatchewan
820 – 1874 Scarth Street
Aboriginal Law Branch
Regina, SK S3P 3B3
Tel: 306.787.7846 / Fax 306.787.9111
Email: mitch.mcadam@gov.sk.ca

P. Mitch McAdam, Q.C.
Alan Jacobson
Deron Kiski, Q.C.
Counsel for the Appellant (SCC 38663) and Intervener (SCC 38781)

Attorney General of Canada
Department of Justice Canada Prairie Region
301 – 310 Broadway
Winnipeg, MB R3C 0S6
Tel: 204.983.0862 / Fax: 204.984.8495
Email: sharlene.telleslangdon@justice.gc.ca

Sharlene Telles-Langdon
Christine Mohr
Mary Matthews
Neil Goodridge
Counsel for the Respondent, Attorney General of Canada (SCC 38663 and SCC 38781)

Attorney General for Ontario
720 Bay Street, 4th Floor
Toronto ON M7A 2S9
Tel: 416.908.7465 / Fax: 416.326.4015
Email: joshua.hunter@ontario.ca

Josh Hunter
Padraic Ryan
Aud Ranalli
Counsel for the Appellant (SCC 38781) and Intervener (SCC 38663) Attorney General of Ontario

Ministère de la justice du Québec
1200, route de l'Église, 4e etage
Québec QC G1V 4M1
Tel: 418.643.1477, poste 20779
Fax : 418.644.7030
Email: jean-vincent.lacroix@justice.gouv.qc.ca
Jean-Vincent Lacroix
Counsel for the Intervener, Attorney General of Quebec (SCC 38663 and SCC 38781)

Gowling WLG (Canada) LLP
2600 – 160 Elgin Street
Ottawa, ON K1P 1C3
Tel: 613.786.8695 / 613.788.3509
Email: lynne.watt@gowlingwlg.com

D. Lynne Watt
Agent for Counsel for the Appellant (SCC 38663) and Intervener (SCC 38781)

Attorney General of Canada
50 O'Connor Street, Suite 500, Room 557
Ottawa ON K1A 0H8
Tel: 613.670.6290 / Fax: 613.954.1920
Email: christopher.rupar@justice.gc.ca

Christopher M. Rupar
Agent for Counsel for the Respondent, Attorney General of Canada (SCC 38663 and SCC 38781)

Supreme Advocacy LLP
340 Gilmour Street
Ottawa ON K2P 0R3
Tel: 613.695-8855 / Fax: 613.695.8560
Email: mfmajor@supremeadvocacy.ca

Marie-France Major
Agent for Counsel for the Appellant (SCC 38781) and Intervener (SCC 38663) Attorney General of Ontario

Noël & Associés
111, rue Champlain
Gatineau QC J8X 3R1
Tel: 819.503.2178 / Fax: 819.771.5397
Email: p.landry@noelassocies.com
Pierre Landry
Agent for Counsel for the Intervener, Attorney General of Quebec (SCC 38663 and SCC 38781)

Gall Legge Grant Zwack LLP
1000 – 1199 West Hastings Street
Vancouver BC V6E 3T5
Tel: 604.891.1152 / Fax: 604.669.5101
Email: pgall@glgzlaw.com

Peter A. Gall, Q.C.
Counsel for the Intervener, Attorney General of Alberta (SCC 38663 and SCC 38781)

Attorney General of New Brunswick
675 King Street, Room 2078
PO Box 6000
Fredericton, NB E3B 5H1
Tel: 506.453.2222 / Fax: 506.453.3275
Email: rachelle.standing@gnb.ca

Rachelle Standing
Isabel Lavoie-Daigle
Counsel for the Intervener, Attorney General of New Brunswick (SCC 38663 and SCC 38781)

Attorney General of Manitoba
1230 – 405 Broadway Avenue
Winnipeg, MB R3C 3L6
Tel: 204.945.6723 / Fax: 204.945.0053
Email: michael.conner@gov.mb.ca

Michael Conner
Allisson Kindle Pejovic
Counsel for Intervener, Attorney General of Manitoba (SCC 38663 and SCC 38781)

Assembly of First Nations
55 Metcalfe Street, Suite 1600
Ottawa ON K1P 6L5
Tel: 613.241.6789 / Fax: 613.241.5808
Email: swuttke@afn.ca
jMcGregor@afn.ca

Stuart Wuttke
Julie McGregor
Adam Williamson
Victor Carter
Counsel for the Intervener, Assembly of First Nations

Caza Saikaley LLP
220 Laurier Avenue W. Suite 350
Ottawa ON K1P 5Z9
Tel: 613.565.2292 / Fax: 613.565.2087
Email: atomkins@plaideurs.ca

Alyssa Tomkins
Agent for Counsel for the Intervener, Attorney General of Alberta (SCC 38663 and SCC 38781)

Gowling WLG (Canada) LLP
2600 – 160 Elgin Street
Ottawa, ON K1P 1C3
Tel: 613.786.8695 / Fax: 613.788.3509
Email: lynne.watt@gowlingwlg.com

D. Lynne Watt
Agent for Counsel for the Intervener, Attorney General of New Brunswick (SCC 38663 and SCC 38781)

Gowling WLG (Canada) LLP
2600 – 160 Elgin Street
Ottawa, ON K1P 1C3
Tel: 613.786.8695 / Fax: 613.788.3509
Email: lynne.watt@gowlingwlg.com

D. Lynne Watt
Agent for Counsel for Intervener, Attorney General of Manitoba (SCC 38663 and SCC 38781)

Supreme Law Group
900 - 275 Slater Street
Ottawa ON K1P 5H9
Tel: 613.691.1224 / Fax: 613.691.1338
Email: mdillon@supremelawgroup.ca

Moira Dillon
Agent for Counsel for the Intervener, Assembly of First Nations

Crease Harman LLP
800 – 1070 Douglas Street
Victoria, BC V8W 2C4
Tel: 250.388.9124 / Fax: 250.388.4294
Email: bhallsor@crease.com

R. Bruce E. Hallsor
Hana Felix
Counsel for the Intervener, Canadian Taxpayers Federation (SCC 38663 and SCC 38781)

Supreme Advocacy LLP
340 Gilmour Street
Ottawa, ON K2P 0R3
Tel: 613.695-8855 / Fax: 613.695.8580
Email: mjmajor@supremeadvocacy.ca

Marie-France Major
Agent for Counsel for the Intervener, Canadian Taxpayers Federation (SCC 38663 and SCC 38781)

Lidstone & Company
1300 – 128 West Pender Street
Vancouver BC V6B 1R8
Tel: 604.899-2269 / Fax: 899.2281
Email: hildebrand@lidstone.ca

Paul A. Hildebrand
Olivia French
Counsel for the Interveners, City of Richmond, City of Victoria, City of Nelson, District of Squamish and City of Vancouver (SCC 38663 and SCC 38781)

Power Law
130 Albert Street, Suite 1103
Ottawa ON K2P 0R3
Tel: 613.702.5560 / Fax: 613.702.5560
Email: mvincelette@powerlaw.ca

Maxine Vincelette
Agent for Counsel for the Interveners, City of Richmond, City of Victoria, City of Nelson, District of Squamish and City of Vancouver (SCC 38663 and SCC 38781)

Public Interest Law Centre
200 – 393 Portage Avenue
Winnipeg, MB R3B 3H6
Tel: 204.985.8540 / Fax: 204.985.8544
Email: jopas@pilc.mb.ca

Joëlle Pastora Sala
Byron Williams
Katrine Day
Counsel for the Intervener, Assembly of Manitoba Chiefs (SCC 38663 and SCC 38781)

Power Law
130 Albert Street, Suite 1103
Ottawa ON K2P 0R3
Tel: 613.702.5560 / Fax: 613.702.5560
Email: mvincelette@powerlaw.ca

Maxine Vincelette
Agent for Counsel for the Intervener, Assembly of Manitoba Chiefs (SCC 38663 and SCC 38781)

Ratcliffe & Company LLP
500 – 221 West Esplanade
North Vancouver BC V7M 3J3
Tel: 604.988.5201 / Fax: 604.988
Email: nhume@ratcliff.com

Nathan Hume
Emma Hume
Cam Brewer
Counsel for the Interveners, Generation Squeeze,

Power Law
130 Albert Street, Suite 1103
Ottawa ON K1P 5G4
Tel: 613.702.5566 / Fax: 613.702.5566
Email: dbosse@juristespower.ca

Darius Bossé
Agent for Counsel for the Interveners, Generation Squeeze, Public Health Association of British Columbia,

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 Law (SCC 38663 and SCC 38781)

Gowling WLG (Canada) LLP
Suite 1600, 1 First Canadian Place
Toronto, ON M5X 1G5
Tel: 416.862.7525 / Fax: 416.862.7661
Email: jennifer.king@gowlingswlg.com

Jennifer L. King
Michael Finley
Liane Langstaff
Counsel for the Intervener, Canadian Public Health Association (SCC 38663 and SCC 38781)

Ecojustice Environmental Law Clinic
University of Ottawa
216 – 1 Stewart Street
Ottawa, ON K1N 6N5
Tel: 613.562.5800 Ext. 3382 / Fax: 613.562.5319
Email: aattaran@ecojustice.ca

Amir Attaran
Counsel for the Intervener, Athabasca Chipewyan First Nation

DeMarco Allan LLP
333 Bay Street, Suite 625
Toronto, ON M5H 2R2
Tel: 647.991.1190 / Fax: 888.734.9459
Email: lisa@demarcoallan.com

Elisabeth DeMarco
Jonathan McGillivray
Counsel for the Intervener, International Emissions Trading Association (SCC 38663 and SCC 38781)

Canadian Environmental Law Association
1500 – 55 University Avenue
Toronto, ON M5J 2H7
Tel: 416.960.2284 Ext. 7218 / Fax: 416.960.9392

Saskatchewan Public Health Association, Canadian Association of Physicians for the Environment, Canadian Coalition for the Rights of the Child and Youth Climate Law (SCC 38663 and SCC 38781)

Gowling WLG (Canada) LLP
160 Elgin Street, Suite 2600
Ottawa ON K1P 1C3
Tel: 613.786.0171 / Fax: 613.788.3587
Email: jeff.beedell@gowlingwlg.com

Jeffrey W. Beedell
Agent for Counsel for the Intervener, Canadian Public Health Association (SCC 38683 and SCC 38781)

Fasken Martineau DuMoulin LLP
1300 – 55 Metcalfe Street
Ottawa ON K1P 6L5
Tel: 613.696.6904 / Fax: 613.230.6423
Email: sarseneault@fasken.com

Sophie Arseneault
Agent for Counsel for the Intervener, International Emissions Trading Association (SCC 38663 and SCC 38781)

Gowling WLG (Canada) LLP
160 Elgin Street, Suite 2600
Ottawa ON K1P 1C3
Tel: 613.786.0171 / Fax: 613.788.3587

Email: castrillij@sympatico.ca

Joseph F. Castrilli
Theresa McClenaghan
Richard D. Lindgren
Counsel for the Interveners, Canadian Environmental Law Association, Environmental Defence Canada Inc. and Sisters of Providence of St. Vincent de Paul (SCC 38663 and SCC 38781)

Ecojustice Environmental Law Clinic
University of Ottawa
216 – 1 Stewart Street
Ottawa ON K1N 6N5
Tel: 613.562.5800 Ext. 3399 / Fax: 613.562.5319
Email: jginsberg@ecojustice.ca

Joshua Ginsberg
Randy Christensen
Counsel for the Intervener, David Suzuki Foundation (SCC 38663 & 38781)

University of Ottawa
Faculty of Law
57 Louis Pasteur Street
Ottawa ON K1N 6N5
Tel: 613.562.5800 Ext. 1270 /
Email: stewart.elgie@uottawa.ca

Stewart Elgie
Counsel for the Intervener, Canada's Ecofiscal Commission (SCC 38663 and SCC 38781)

Nanda & Company
3400 Manulife Place
10180 – 101 Street N.W.
Edmonton AB T5J 4K1
Tel: 780.801.5324 / Fax: 587.318.1391
Email: avnish@nandalaw.ca

Avnish Nanda
Martin Olszynski
Counsel for the Intervener, Progress Alberta Communications Limited (SCC 38663 and SCC 38781)

Email: jeff.beedell@gowlingwlg.com

Jeffrey W. Beedell
Agent for Counsel for the Interveners, Canadian Environmental Law Association, Environmental Defence Canada Inc. and Sisters of Providence of St. Vincent de Paul (SCC 38663 and SCC 38781)

Champ and Associates
43 Florene Street
Ottawa ON K2P 0W6
Tel: 613.237.4740 / Fax: 613.232.2680
Email: broy@champlaw.ca

Bijon Roy
Agent for Counsel for the Intervener, Canada's Ecofiscal Commission (SCC 38663 and SCC 38781)

McGuinty Law Offices
1192 Rockingham Avenue
Ottawa ON K1H 8A7
Tel: 613.526.3858 / Fax: 613.526.3187
Email: dylanjr@mcguintylaw.ca

Dylan Jr. McGuinty
Agent for Counsel for the Intervener, Progress Alberta Communications Limited (SCC 38663 and SCC 38781)

Westaway Law Group
55 Murray Street, Suite 230
Ottawa ON K1N 5M3
Tel: 613.722.6339 / Fax: 613.722.9097
Email: cynthia@westawaylaw.ca

Cynthia Westaway
M. Patricia Lawrence
Counsel for the Intervener, Anishinabek Nation and United Chiefs and Councils of Mnidoo Mnising (SCC 38781)

Westaway Law Group
55 Murray Street, Suite 230
Ottawa ON K1N 5M3
Tel: 613.702.3042 / Fax: 613.722.9097
Email: genevieve@westawaylaw.ca

Geneviéve Boulay
Agent for Counsel for the Intervener, Anishinabek Nation and United Chiefs and Councils of Mnidoo Mnising (SCC 38781)

Goldblatt Partners LLP
20 Dundas Street West, Suite 1039
Toronto ON M5G 2C2
Tel: 416.979.4380 / Fax: 416.591.7333
Email: sbarrett@goldblattpartners.com

Stephen M. Barrett
Simon Archer
Mariam Moktar
Counsel for the Intervener, Canadian Labour Congress (SCC 38663 and SCC 38781)

Goldblatt Partners LLP
30 Metcalfe Street, Suite 500
Ottawa ON K1P 5L4
Tel: 613.482.2463 / Fax: 613.235.3041
Email: cbauman@goldblattpartners.com

Colleen Bauman
Agent for Counsel for the Intervener, Canadian Labour Congress (SCC 38663 and SCC 38781)

Arvay Finlay
1512 – 808 Nelson Street
Vancouver BC V6Z 2H2
Tel: 604.696.9828 / Fax: 888.575.3281
Email: dwu@arvayfinlay.ca

David W. Wu
Counsel for the Intervener, Oceans North Conservation Society (SCC 38663 and SCC 38781)

Supreme Law Group
900 – 275 Slater Street
Ottawa, ON K1P 5H9
Tel: 613.691.1224 / Fax: 613.691.1338
Email: mdillon@supremelawgroup.ca

Moira Dillon
Agent for Counsel for the Intervener, Oceans North Conservation Society (SCC 38663 and SCC 38781)

Stockwoods LLP
77 King Street West, P.O. Box 140
TD North Tower, Suite 4130
Toronto ON M5K 1H1
Tel: 416.593.7200 / Fax: 416.593.9345
Email: justins@stockwoods.ca

Justin Safayeni
Zachary Al-Khatib
Counsel for the Intervener, Amnesty International Canada (SCC 38663 and SCC 38781)

Conway Baxter LLP
400 – 411 Roosevelt Avenue
Ottawa, ON K2A 3X9
Tel: 613.691.0368 / Fax: 613.688.0271
Email: dtaylor@conway.pro

David P. Taylor
Agent for Counsel for the Intervener, Amnesty International Canada (SCC 38663 and SCC 38781)

University of Ottawa
57 Louis Pasteur Street
Ottawa, ON K1N 6C5
Tel: 613.562.5800 Ext. 3331 / Fax: 613.562.5124
Email: Nathalie.chalifour@uottawa.ca

Nathalie Chalifour
Anne Levesque
Counsel for the Interveners, National Association of Women and the Law and Friends of the Earth (SCC 38663 and SCC 38781)

University of Ottawa
Faculty of Law
57 Louis Pasteur Street
Ottawa ON K1N 6N5
Tel: 613.562.5800 Ext. 3169
Email: Jeremy.deBeer@uottawa.ca

Jeremy De Beer
Counsel for the Intervener, Smart Prosperity Institute (SCC 38663 and 38771)

Michel Bélanger Avocats
454 avenue Laurier Est
Montréal, QC H2J 1E7
Tel: 514.991.9005 / Fax: 844.7009
Email: David.robitaille@uottawa.ca

David Robitaille
Marc Bishai
Counsel for the Intervener, Centre québécois du droit de l'environnement et Équiterre (SCC 38663 and SCC 38781)

McKercher LLP
374 Third Avenue South
Saskatoon, SK S7K 1M5
Tel: 306.664.1277 / Fax: 306.653.2669
Email: d.stack@mckercher.ca

David M. A. Stack, Q.C.
Counsel for the Interveners, Saskatchewan Power Corporation and SaskEnergy Incorporated

Conway Baxter LLP
400 – 411 Roosevelt Avenue
Ottawa, ON K2A 3X9
Tel: 613.288.0149 / Fax: 613.688.0271
Email: msandilands@conway.pro

Marion Sandilands
Agent for Counsel for the Interveners, National Association of Women and the Law and Friends of the Earth (SCC 38663 and SCC 38781)

Gowling WLG (Canada) LLP
160 Elgin Street, Suite 2600
Ottawa ON K1P 1C3
Tel: 613.786.0197 / Fax: 613. 563.9869
Email: guy.regimbald@gowlingwlg.com

Guy Régimbald
Agent for Counsel for the Intervener, Smart Prosperity Institute (SCC 38663 and 38771)

Juristes Power
130 rue Alberta, bureau 1103
Ottawa, ON K1P 5G4
Tel: 613.702.5560 / Fax: 613.702.5561
Email: mvincelette@juristespower.ca

Maxine Vincelette
Agent for Counsel for the Intervener, Centre québécois du droit de l'environnement et Équiterre (SCC 38663 and SCC 38781)

Gowling WLG (Canada) LLP
2600 – 160 Elgin Street
Ottawa, ON K1P 1C3
Tel: 613.786.8695 / 613.788.3509
Email: lynne.watt@gowlingwlg.com

D. Lynne Watt
Agent for Counsel for the Interveners, Saskatchewan Power Corporation and SaskEnergy Incorporated

Kowalchuk Law Office
18 Patton Street
Regina SK S4R 3N9
Tel: 306.529.3001
Email: larry@kowalchuklaw.ca

Larry W. Kowalchuk
Counsel for the Interveners, 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 (SCC 38663 and 38781)

Supreme Law Group
900 – 275 Slater Street
Ottawa, ON K1P 5H9
Tel: 613.691.1224 / Fax: 613.691.1338
Email: mdillon@supremelawgroup.ca

Moira Dillon
Agent for Counsel for the Interveners, 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 (SCC 38663 and 38781)

TABLE OF CONTENTS

PART I: OVERVIEW OF POSITION AND STATEMENT OF FACTS

1. The troubling question raised by these references is whether our system of federalism is an obstacle to addressing the existential threat of global climate change. Are we the only major emitting country in the world whose constitution renders it impossible to make national commitments to reduce greenhouse gases? Or can national targets be met using means compatible with the unity-in-diversity that characterizes Canada's federal structure?

2. In British Columbia, the "future" of a climate transformed by human greenhouse gas emissions is here now. A major industry has *already* been devastated: people have *already* been forced out of their homes. The province has experienced an average temperature increase of 1.4°C since 1900 – the limit of what scientists tell us would destabilize biological and social systems globally.[1] A succession of relatively warm winters in the 1990s led to the mountain pine beetle epidemic and, as a direct consequence, the loss of most of the merchantable pine volume in interior British Columbia by 2012.[2] The worst forest fire seasons on record occurred back-to back in 2017 and 2018. The elevated risk is because of climate change.[3] In coming decades, British Columbia can expect wildfires like California's today. Melting permafrost will damage infrastructure in Northern British Columbia, especially for remote communities and Indigenous peoples.[4] Sea level rise poses risk of unquantifiable flooding losses for coastal British Columbia, particularly Prince Rupert and the Fraser River delta, where 100 square kilometres of land are currently within one metre of sea level.[5] This includes the City of Richmond, home to 220,000 people.

3. The Attorney General of British Columbia intervenes out of a deep conviction that the Canadian system of federalism – properly understood – *can* suggest a solution to this crisis. To be sure, there are reasons for pessimism. Canada has set a number of national targets – none of them even arguably sufficient to the task - and missed every one so far.[6] Progress in some provinces has been offset by increased emissions in others.[7] Voluntary intergovernmental agreements have

---

[1] T. Lesiuk Affidavit #1, ¶5(a), Ex. B, **Respondent's Record, vol. 6, pp. 2, 19.**
[2] T. Lesiuk Affidavit #1, ¶7, Ex. B, C, **Respondent's Record, vol. 6, pp. 3, 58-59, 75-83.**
[3] T. Lesiuk Affidavit #1, ¶8, Ex. D, **Respondent's Record, vol. 6, pp. 4, 85-99.**
[4] T. Lesiuk Affidavit #1, ¶11, Ex. F, **Respondent's Record, vol. 6, pp. 4-5, 107-112**
[5] T. Lesiuk Affidavit #1, ¶¶9-10, Ex. E, **Respondent's Record, vol. 6, pp. 4, 48.**
[6] J. Moffet Affidavit #1, ¶¶34, 36, **Respondent's Record, vol. 1, pp. 23-24.**
[7] W. Goodlet Affidavit #1, Ex. A, **Respondent's Record, vol. 5, p. 101.**

broken down.[8] British Columbia nonetheless argues that the problem of climate change in fact demonstrates the value of combining unity and diversity through a division of sovereignty: federalism.

4. Stabilizing greenhouse gas emissions is hard in large part because it is a *collective action problem*, maybe the greatest collective action problem the world has ever faced.[9] Gases mix. So the consequences for any particular part of the planet are completely uncorrelated to its contribution to the stock of greenhouse gas in the atmosphere. But the economic benefits of emissions – and therefore the costs of mitigation – are local. The efforts of any small jurisdiction, no matter how innovative or extensive, will make little difference unless others act with comparable stringency. Climate change is thus a problem for which it is in everyone's interest that someone else do something about it. A solution to a collective action problem must thus be collective. However, diversity of response to this crisis has proven necessary. Sub-national governments have acted as "laboratories of democracy,"[10] developing innovative responses to the challenge, often in the face of inaction by central governments. Among their experiments has been pricing greenhouse gases, with British Columbia, Alberta and Quebec being leaders in developing levy, output-based and cap-and-trade systems, respectively.

5. The world as a whole has no constitutional solution as to how to reconcile a common level of stringency with decentralized innovation. It must rely on negotiation between independent sovereign states. Canada, by contrast, already in 1867 divided sovereignty in a way that makes precisely this balance possible. Provinces were given authority to address most matters "in the province," but the opening words of section 91 (the so-called "Peace, Order and Good Government" clause) gave Parliament authority over matters that are not within any provincial head of power, most importantly because they are not properly classified as being "in" any particular province and so are of "national concern." This has been interpreted to mean that legislation whose dominant purpose and effect indivisibly addresses the extra-provincial consequences of provincial inaction and does not fundamentally disrupt the federal-provincial

---

[8] J. Moffet Affidavit #1, ¶¶53-81, **Respondent's Record, vol. 1, pp. 29-39.**
[9] Maureen Cropper & Wallace E. Oates, "Environmental Economics: A Survey", pp. 678-681, J. Parker Affidavit #1, Ex. B, **Respondent's Record, vol. 7, pp. 96-99;** William Nordhaus, "Economic aspects of global warming in a post-Copenhagen environment", J. Parker Affidavit #1, Ex. D, **Respondent's Record, vol. 7, pp. 175-180.**
[10] *New State Ice Co. v. Liebmann*, 285 U.S. 262 (1932), Brandeis J (dissenting).

balance can be enacted by Parliament. Thus, the people of Canada are not left without a means to democratically address joint threats because one region might defect: our division of powers is not a suicide pact.

6. The dominant legal and practical effect of the *Greenhouse Gas Pollution Pricing Act*, S.C. 2018, c. 12, s. 186 (the "*GGPPA*") is that it enables the federal cabinet to set a minimum standard of stringency for pricing greenhouse gases within Canada and impose backstops if provincial and territorial measures do not meet this benchmark. The principal purpose is to allocate part of Canada's national greenhouse gas targets across the country using a means (pricing) Parliament considers transparent, efficient and fair, while giving provinces maximum leeway to develop pricing measures that work for their diverse economies and energy systems.

7. Recognizing this "matter" of *establishing minimum national pricing standards to allocate part of Canada's overall targets for greenhouse gas emissions reduction* as one of national concern is required by the principle of *exhaustiveness* because provinces cannot allocate stringency to each other, and is consistent with the principle of *subsidiarity* because the choice of how a level of stringency is implemented is left with those closest to the people affected, while the choice of how *much* stringency is left with those closest to the people affected by *that* decision – all Canadians.

8. We cannot expect succeeding generations to maintain their loyalty to the Constitution of Canada if we ask them to choose between it and their future. British Columbia says we do not need to ask them to make this choice. While the framers of the 1867 bargain could not have anticipated the effects of industrialization on the global climate system, they understood collective action problems. They designed a constitutional structure to address these within a framework that respects diversity. It is for the current generation to take the structure they left us and apply it to the central challenge of our time.

9. British Columbia adopts the facts as stated by the Attorney General of Canada.

PART II: POSITION ON APPELLANTS' QUESTIONS

10. British Columbia intervenes on the following questions, the first two asked by the Attorney General of Saskatchewan and the third by the Attorney General of Ontario:

(a) Should this Court "create a new federal head of power for GHG emissions under the national concern branch of POGG?" **The presupposition of this question is wrong.**

The Court does not create new federal heads of power under the national concern doctrine. The correct approach is to precisely characterize the dominant purpose and effect of the *statute* and determine whether the matter so defined is not "in the province" because it indivisibly addresses extra-provincial interests without disrupting the fundamental balance of federal and provincial power.

(b) Is the pith and substance of the *GGPPA* to regulate provincial sources of GHG emissions through the imposition of a charge on fuels and setting industrial emission limits? **No. The pith and substance of the *GGPPA* is establishing minimum national pricing standards to allocate part of Canada's overall targets for GHG reduction.**

(c) Does the *GGPPA* fall within the national concern branch of section 91? **Yes. Establishing minimum national pricing standards to allocate part of Canada's overall targets for greenhouse gas emissions reduction indivisibly addresses extra-provincial interests and respects the fundamental balance of federal and provincial power.**

PART III: STATEMENT OF ARGUMENT

Ordinary "Pith and Substance" Approach Applies to National Concern Doctrine

11. The basic framework for analyzing the validity of a statute in a division-of-powers analysis has been set out many times. The first step is to determine the "matter" in relation to which the impugned law is enacted. This *characterization stage* is about analyzing the *statute,* not the constitution, in order to determine its "pith and substance" or "dominant characteristic." The characterization stage should be a precise, neutral analysis of dominant purpose and legal and practical effect, determined from intrinsic and extrinsic evidence. *This* "matter" is then evaluated under the various tests the courts have developed for whether it fits within one or more "classes of subjects" (the *classification* stage).[11] To confuse these two stages risks a conclusory and circular analysis "overly oriented towards results."[12] This can only be avoided by starting with what the law itself does and why.

12. A "fundamental corollary" of this standard procedure is that legislation enacted by one level of government may constitutionally affect *other* matters within the jurisdiction of the other

[11] *Reference re Firearms Act (Can.)*, [2000] 1 SCR 783, 2000 SCC 31, ¶¶15-18.
[12] *Chatterjee v. Ontario (Attorney General)*, 2009 SCC 19, [2009] 1 SCR 624, ¶14

level of government. These effects, while referred to as "incidental", can be of "significant practical importance."[13] This allows Canadian federalism to reconcile heads of powers that are, with minor exceptions, stated to be "exclusive" with a "dominant tide" of constitutional overlap and interplay, resolved primarily through political processes, subject always to real and ascertainable limits on the powers of each level of government.[14]

13. A basic issue in these appeals is whether these trite observations about Canadian constitutional law apply to the so-called "national concern" or "national dimension" doctrine that certain matters are within federal authority because they are "beyond local or provincial concern or interests and must from [their] inherent nature be the concern of the Dominion as a whole."[15] Or is there something especially concerning about this doctrine, such that it should be approached in a *sui generis* manner?

14. The Attorney General of Saskatchewan argues for a *sui generis* approach, as did the Attorney General of Alberta in its reference to its Court of Appeal. According to Saskatchewan, the validity analysis under the national concern doctrine is different from every other source of federal or provincial power in two respects.

15. First, Saskatchewan explicitly denies that the "matter" which either is or is not of national concern is the matter (dominant characteristic, pith and substance) of the *statute.* Saskatchewan starts with an unexceptionable account of the general process of pith-and-substance analysis (Saskatchewan Factum, ¶¶18-21) and in applying this to the *GGPPA* acknowledges that it is limited to *pricing* and indeed to judging whether provincial pricing mechanisms are sufficiently stringent (¶¶22-39). While British Columbia disagrees with Saskatchewan's ultimate characterization, a more fundamental issue is joined when it introduces a new constitutional concept – the "Proposed POGG Power" – which must be "broader than the pith and substance of the legislation before the Court" (¶57). Even though its own characterization of the *GGPPA* is more limited, it says the "Proposed POGG Power" must "encompass the regulation of GHGs in Canada by any and all means" (¶58). Saskatchewan says a "Proposed POGG Power" conceives of the national concern doctrine as adding new federal powers by judicial constitutional amendment

---

[13] *Canadian Western Bank v. Alberta*, [2007] 2 SCR 3, 2007 SCC 22, ¶28.
[14] *Canadian Western Bank*, ¶¶ 24, 28-29, 34-37.
[15] *Ontario (A.G.) v. Canada Temperance Federation*, [1946] AC 193 (JCPC), p. 205

and concludes a "Proposed POGG Power" must be at the same level of abstraction/generality as an enumerated power (¶55).

16. Second, Saskatchewan denies that the dominant tide of constitutional interplay and effective overlap applies to matters of national concern as it does to other matters within enumerated federal heads of power (Saskatchewan, ¶¶49-53).

17. While Canada and Ontario do not explicitly take a *sui generis* approach to the "national concern" analysis, in practice their definition of the "matter" is less about the statute and more about a supposedly new constitutional power they either support or oppose. British Columbia by contrast rejects a *sui generis* approach entirely. The standard characterization/classification analysis is as applicable to the national concern doctrine as to any other head of power. A *sui generis* approach is contrary to the text of the Constitution, the principles of Canadian federalism, binding precedent and the proper role of the judiciary. It creates a completely unnecessary dilemma between robust limits to central power and effective national action where it would not otherwise exist. By detaching the matter from an objective analysis of the statute, it renders the debate on constitutionality a vicious circle – Saskatchewan's chosen "Proposed POGG Power" not surprisingly fails its classification test, since Saskatchewan was the one that proposed it. The fight was fixed before the first bell sounded.

18. The national concern doctrine arises out of deep structural aspects of Canada's Constitution. The Preamble to the *Constitution Act, 1867* sets out a desire to be "federally united" under a constitution "similar in principle to that of the United Kingdom." No previous country had combined a federal division of sovereignty between central and sub-national governments with a British system of parliamentary democracy. The central feature of parliamentary democracy in the *British* model is that the legislature can make or unmake any law whatsoever.[16] The central feature of a *federal* union, on the other hand, is that Parliament and the provincial legislatures are supreme only with respect to matters that fall within their respective spheres of jurisdiction, implying that there are some laws that each cannot make or unmake.[17] Federalism and parliamentary democracy can only be reconciled through the principle of *exhaustiveness*: the whole of legislative power,

---

[16] E.C.S. Wade, "Introduction", A.V. Dicey, *The Law of the Constitution,*10th ed. (1959) p. xxiv.
[17] *Reference re Pan-Canadian Securities Regulation*, 2018 SCC 48 [the "2018 *Securities Reference*"], ¶¶ 53-56; *Hodge v. The Queen* (1883), 9 AC 117 (JCPC) at p. 11-12.

whether exercised or merely potential, is distributed between Parliament and the provincial legislatures.[18]

19. The framers of Confederation recognized that they could not anticipate all future needs for legislation, and therefore exhaustiveness was not compatible with purely enumerated powers. Under s. 92(16), they gave provinces legislative jurisdiction over "all Matters of a merely local or private Nature in the Province." Through the opening words of section 91, they gave the Dominion Parliament legislative authority over all matters not within the class of subjects assigned exclusively to provincial legislatures and not otherwise within Parliament's authority. This gave federal authority over unenumerated matters not merely local or private - a deliberate departure from the model of the United States of America, as specified in the Tenth Amendment.[19]

20. Matters of "national concern" are within the power of the federal Parliament because *all* provincial powers, including the far-reaching s. 92(13) power over "property and civil rights" are specified to be "in the province": it follows that if a matter is not "in the province" and is not enumerated in the federal list, it must belong to Parliament under the general power granted by the opening words of s. 91.[20]

21. To be sure, it is very important to be cautious before characterizing a matter as outside any particular province and therefore of national concern.[21] The purely formal approach originally taken by the Privy Council in *Russell* of asking whether the law on its face applies nationally would have, if it had been continued, ultimately rendered Canada a unitary state. [22] But this caution is not expressed by a *sui generis* methodology. Rather, it is manifested first by carefully and precisely defining the "matter"[23] and second by determining whether that "matter" is one that is the subject of *material* or *substantive* provincial inability, in the sense that the extra-provincial effects of provincial inaction in relation to that matter (on other provinces, countries or aboriginal and treaty

---

[18] *Reference re Same-Sex Marriage*, [2004] 3 SCR 698, 2004 SCC 79, ¶ 34.
[19] Hon. John A. Macdonald, Speech to the Legislative Assembly of the Province of Canada, 6 February 1865, P.B. Waite, *The Confederation Debates in the Province of Canada, 1865*, p. 44.
[20] *Interprovincial Co-operatives Ltd. et al. v. R.*, [1976] 1 SCR 477, pp. 512-3.
[21] *Ontario v. Canada* (1896), [1897] AC 199 (JCPC) [*Local Prohibition*], pp. 205-6.
[22] *Russell v. The Queen* (1882), 7 AC 829 (PC). Dale Gibson, "Measuring National Dimensions", 7 *Man. L.J.* 15 (1976), p. 32.
[23] William Lederman, "Unity and Diversity in Canadian Federalism", 53 *Can. Bar. Rev.* 596 (1975); Gerald Le Dain, "Sir Lyman Duff and the Constitution." 12 *Osgoode Hall L. J.* 261 (1974).

rights) outweigh the legitimate claims of provincial autonomy.[24] The provincial inability test reconciles exhaustiveness with the principle of *subsidiarity*, that "law-making and implementation are often best achieved at a level of government that is not only effective, but also closest to the citizens affected."[25] It is only when the set of citizens directly and primarily affected by the pith and substance of the law transcends the province that provincial inability is made out.

22. The *sui generis* approach to the national concern doctrine has no basis in the text of the Constitution. The opening words of s. 91 assign to the Queen-in-Parliament the "Matters" not coming within "Classes of Subjects" assigned exclusively to the provinces or otherwise enumerated. This is precisely the same distinction between "Matters" and "Classes of Subjects" as it uses in relation to enumerated powers. As the Court stated in the *Firearms Reference*, "matter" is the word the Constitution uses for what the jurisprudence has referred to as the "dominant characteristic" or "pith and substance" of a statute or part of a statute: the terms are synonymous.[26] There is no textual basis for a third step beyond characterization of the matter and classification of the matter within a head of power – or, in the case of the general power, a determination that there is no enumerated head of power within which to classify it.

23. What the text leaves open is how narrow or broad the category of "matter" should be defined. If the matter is defined too broadly, then it will *either* unnecessarily sweep more precisely defined matters that could be dealt with by the provinces into the federal sphere with unfortunate centralizing effect *or* leave a gap in overall legislative sovereignty when some more narrowly defined sub-component of the matter is beyond provincial ability.

24. The narrow definition of the "matter" in the national concern case law was observed and theorized by W. R. Lederman in a 1975 article. Lederman noted that there is no single, determinate way of categorizing laws. He objected to broad categories such as "culture", "language" or "labour relations" in favour of "the need to keep the power-conferring phrases of our federal-provincial division of powers at meaningful levels of specifics and particulars."[27] He noted with approval that this Court had avoided characterizing a (hypothetical) federal statute as being about "pollution" (too broad) compared with "pollution of interprovincial rivers bringing residents of

---

[24] Gibson, pp. 33-6; *R. v. Crown Zellerbach Canada Ltd.*, [1988] 1 SCR 401, ¶¶33-35.
[25] *14957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town)*, 2001 SCC 40, ¶3.
[26] *Firearms Act Reference*, ¶16.
[27] Lederman, p. 43.

different provinces into legal conflict with one another" (a properly specific characterization for a matter of national concern).[28] (In the case to which he was referring, Justice Pigeon, for three judges, held that interprovincial pollution was a matter of national concern. Justice Ritchie, whose judgment was decisive, agreed, but held that a downstream province could also legislate with respect to property damage from that pollution, so long as it did not purport to prevent activities permitted in the upstream province.[29]) As Saskatchewan observes (¶61), Professor Lederman's article influenced Justice Beetz in the *Anti-Inflation Reference.*[30]

25. There are two sides to this preference for narrow matters of national concern. At the characterization stage, it requires that the definition of dominant purpose and effect employed in the analysis not overshoot the actual statute. This is a directive to *courts.* At the classification stage, it requires that the properly-characterized matter of the statute not overshoot the actual provincial inability and thereby lead to unbalancing the division of powers. This is a directive to *Parliament*.

26. The importance of narrowly and precisely defining the "matter" migrated *from* the national concern context to cases involving other heads of power. So in a case relating to provincial jurisdiction over property and civil rights under s. 92(13) and federal jurisdiction over "Indians and Lands Reserved for Indians" under s. 91(24), the Court followed Lederman in rejecting "culture" as too broad as a characterization of the matter of a statute.[31] In the 2010 *Assisted Human Reproduction* reference, involving the criminal law power under s. 91(27), the plurality pointed out that "vague characterizations" of the pith and substance lead to dilution and confusion of constitutional doctrines and erosion of the scope of provincial powers, especially where the limits of the head of power are "imprecise".[32] The Court's most recent comments to this effect are in the context of navigation and shipping.[33] This similarity of approach to the matter across classes of subjects makes sense: if the method of characterization depends on the classification ultimately done, the results-oriented circularity Justice Binnie warned about would be inevitable.[34]

27. While some past characterizations may perhaps have been fairly broad, the courts have

---

[28] Lederman, p. 45.
[29] *Interprovincial Co-operatives*, pp. 525-6.
[30] *Re: Anti-Inflation Act*, [1976] 2 SCR 373 [*Anti-Inflation Reference*], p. 451, Beetz J.
[31] *Kitkatla Band v. British Columbia*, [2002] 2 SCR 146, 2002 SCC 31, ¶51.
[32] *Reference re Assisted Human Reproduction Act*, [2010] 3 SCR 457, 2010 SCC 61, ¶¶ 190-191.
[33] *Desgagnés Transport Inc. v. Wärtsilä Canada Inc.*, 2019 SCC 58, ¶¶35, 37.
[34] *Chatterjee*, ¶16.

actually been remarkably consistent in insisting that a national concern analysis start with the statute. In the seminal *Canadian Temperance Federation* case, the Privy Council introduced the modern national concern doctrine with the words, "the true test must be found in the real subject matter *of the legislation.*"[35] As with any other characterization exercise, it is the dominant purpose and effect of the legislation that was the starting point right from the beginning. This dictum was quoted by most of the judges in *Johannesson*[36] and then in subsequent cases.[37] And in application, it is the statute that provides the "matter" that is either of national concern or not. For example, in *Munro,* the Court looked at the at the purpose and effect of the *National Capital Act* to find that its matter was "establishment of a region consisting of the seat of the Government of Canada and the defined surrounding area which are formed into a unit to be known as the National Capital Region which is to be developed, conserved and improved in order that the nature and character of the seat of the Government of Canada may be in accordance with its national significance."[38]

28. In what is now the leading "national concern" case, *Crown Zellerbach,* the Court went through the orthodox method of first characterizing the matter of the *Act* before "considering the relationship of the subject-matter of the Act to the possible bases of federal legislative jurisdiction."[39] Saskatchewan misunderstands what was at issue in *Crown Zellerbach* when it asserts that the majority's characterization was broader than the purpose and effect of the *Ocean Dumping Control Act* (Saskatchewan, ¶55). The majority in fact favoured a *narrower* characterization of the *Act* compared with the broader "regulating dumping of substances [whether pollutants or not] into marine waters" favoured by the company challenging the *Act* and adopted by the dissent.[40] Justice Le Dain used precisely the same characterization of the "matter" for rejecting classification under the s. 91(12) Fisheries power, as for accepting it as a national concern - demonstrating that there is nothing *sui generis* about characterization in a national concern case.[41]

---

[35] *Ontario (A.G.) v. Canada Temperance Federation*, [1946] AC 193 (JCPC), p. 205.
[36] *Johannesson v. Municipality of West St. Paul*, [1952] 1 SCR 292, pp. 309 (Kerwin J), 311 (Kellock & Cartwright JJ), 318 (Estey & Taschereau JJ), 328 (Locke J).
[37] *Munro v. National Capital Commission*, [1966] SCR 663, p. 670; *Anti-Inflation Reference*, p. 431, Laskin CJC; *Schneider v. The Queen*, [1982] 2 SCR 112, p. 140, Estey J concurring; *Crown Zellerbach*, ¶24;
[38] *Munro*, p. 667.
[39] *Crown Zellerbach*, ¶18.
[40] *Crown Zellerbach*, ¶¶55-56.
[41] *Crown Zellerbach*, ¶¶19-22.

29. The unacceptably broad "matter" of the *Anti-Inflation Act* came not from some general principle that matters under the national concern doctrine must be broad – indeed that is precisely the opposite of what was held by Justice Beetz – but because the pith and substance of the *Anti-Inflation Act*, which mandated the price term in every transaction in the provincial private sector by the federal government – *was* broad. It was *Canada* that characterized it as the "containment and reduction of inflation." The general point is that the matter should be defined as precisely and narrowly as consistent with *accurately* reflecting what the statute does and why. If that leads to something too broad for the classification analysis, then the federal enactment loses in a fair fight.

30. Saskatchewan's claim that the Court "adds" "heads of power" is clearly contrary to s. 52(3) of the *Constitution Act, 1982*. Heads of power ("Classes of Subjects") can only be added or subtracted through the Amending Formula. What a court does – in a national concern case as in any other – is determine whether the *matter* of an impugned Act is *within* the class of subjects already given. The only difference in a "POGG" case is that the issue is whether the matter is *not* within any such class of subjects: in the case of a matter of national concern, because it is not "in the province." This creates new law in the same way all constitutional decisions do, but it does not amend the Constitution itself. Since the framers of Confederation gave the general power to Parliament, *Saskatchewan* must turn to the amendment process if it is unhappy with that decision.

31. Saskatchewan says applying the *Crown Zellerbach* test to the actual matter of the *GGPPA* as determined through the ordinary "pith and substance" test "sets a precedent for Canada to continually return before the Court to constitutionalize its preferred policies on GHG emissions piece by piece" (¶57). Ignoring Saskatchewan's odd use of the word "constitutionalize", this is not a bug, but a feature. Parliament *should* be encouraged to act as boldly as the common threats to the country mandate, but as cautiously as federalism requires. Courts *should* limit their holdings to the legislation and record before them. If establishing minimum standards of stringency for pricing emissions to help reach national greenhouse gas reduction targets meets this test, the Court should say so. If future Parliaments go further, provincial inability to address those matters should be judged then.

32. British Columbia disagrees profoundly with Saskatchewan's claim that the legislative means Parliament or a provincial legislature chooses should be ignored in constitutional validity analysis (Saskatchewan, ¶45). On the contrary, validity has always looked both at purpose *and*

effect of legislation.[42] This is because the effects ("means") are constitutionally important. There is all the (constitutional) difference in the world between pursuing an end by spending, as opposed to licensing, or through property-based as opposed to sentencing-based means.

33. Just as the classification analysis for national concern cases is the same as for other cases, so too is the relationship between exclusive authority over matters and the dominant tide of effective overlap.[43] As Lord Simon put it at the outset, a matter of national concern "may in another aspect touch upon matters specially reserved to the Provincial Legislatures."[44] With few exceptions, *all* federal and provincial powers are "exclusive" and are also "plenary" in the sense that the power of the Parliament of the United Kingdom to make or unmake any law in relation to that matter is plenary: Justice La Forest, for example, referred to the criminal law power under s. 91(27) of the *Constitution Act, 1867* as "plenary" without in any way suggesting that it could not lead to effective overlaps with provincial authority.[45] Indeed, the "double aspect doctrine" was first declared in relation to the general power, which was the basis for the *Canada Temperance Act*,[46] held to be consistent with provincial temperance legislation.[47] Provinces and the federal Parliament share jurisdiction over land use decisions in the capital region, dumping in salt water, advertisements carried on radio and television, and drinking on airplanes.[48] If the word "plenary" is taken to mean that there cannot be substantial overlap with provincial authority, then federal authority over matters of national concern is not plenary.[49]

---

[42] *Firearms Act Reference*, ¶14.
[43] Nathalie Chalifour, "Jurisdictional Wrangling over Climate Policy in the Canadian Federation: Key Issues in the Provincial Constitutional Challenges to Parliament's Greenhouse Gas Pollution Pricing Act", 50 *Ottawa L.R.* 197 (2019); Andrew Leach & Eric Adams, "Seeing Double: Peace, Order, and Good Government, and the Impact of Federal Greenhouse Gas Emissions Legislation on Provincial Jurisdiction" (forthcoming) *Constitutional Forum*
[44] *Temperance Federation*, p. 205
[45] *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1995] 3 SCR 199, ¶¶28, 32.
[46] *Russell*.
[47] *Local Prohibition*; *Canada Temperance Federation*, p. 198.
[48] *Munro* ; *Re Regulation & Control of Radio Communication in Canada*, [1932] 2 DLR 81 (JCPC); *Irwin Toy Ltd. v. Quebec (AG)*, [1989] 1 SCR 927; *Johannesson*; *Air Canada v. Ontario (LCB)*, [1997] 2 SCR 581.
[49] *Ontario Hydro v. Ontario (Labour Relations Board)*, [1993] 3 SCR 327, p. 340, Lamer CJC; p. 424, Iacobucci J.

Dominant Characteristic of *GGPPA* Establishing Minimum Pricing Standards to Allocate Part of Canada's GHG Targets

34. So what does the *GGPPA* do and why does it do it? Two aspects of the *GGPPA* are crucial for the answer. The first is that, with incidental exceptions, the *GGPPA* does not *forbid* or even *regulate* conduct, but concerns itself only with what people *pay* to engage in it. As its name suggests, it is about *pricing.* The second is that it only directly prices emissions if the Governor-in-Council concludes that the pricing mechanisms operative under provincial or territorial law are not adequately stringent – implicitly, in relation to the goal of meeting national targets for total emissions. The majority opinion of the Saskatchewan Court of Appeal and the concurring opinion of Associate Chief Justice Hoy in the Ontario Court of Appeal grappled with these dominant characteristics, while the other opinions, unfortunately, ignored one or both or conflated characterization with classification.

35. The "dominant characteristic" has been said to be what the statute is "all about."[50] Of course, this is not self-defining: anything can be characterized at varying levels of generality, and statutes are no exception. The same law can be said to be "about" the future of the world, the environment, global climate change, pollution, greenhouse gases, pricing of greenhouse gases, setting minimum standards of price stringency for greenhouse gases; or setting minimum standards of stringency for pricing greenhouse gas emissions to allocate a portion of overall targets. Especially in recent years, this Court has made it abundantly clear that the dominant characteristic must be characterized at the lowest accurate level of abstraction.[51]

36. Because in determining the dominant characteristic/pith and substance/matter, both purpose and effect are relevant,[52] when characterizing statutes with maximal precision, the Court has repeatedly included references to the effects *and* purpose in its formulation. Examples include promoting the stability of the Canadian economy (purpose) by managing systemic risks related to capital markets having the potential to have material adverse effects on the Canadian economy (effect)[53] or the licensing of drivers (effect), enhancement of highway traffic safety (purpose) and

---

[50] A. S. Abel, "The Neglected Logic of 91 and 92", 19 *U.T.L.J.* 487 (1969), p. 490, cited in *Desgagnés*, ¶35.
[51] *Desgagnés*, ¶¶35, 37.
[52] *Firearms Act Reference*, ¶14.
[53] *Pan-Canadian Securities Reference*, ¶ 97

deterrence of persons from driving on highways when their ability is impaired by alcohol (effect).[54] In other cases, the effect is specified in a way that implicitly draws on the purpose: for example, creation of a property-based authority to seize money and other things shown on a balance of probabilities to be tainted by crime and thereafter to allocate the proceeds to compensating victims of and remedying the societal effects of criminality[55] or replacing the employment income interrupted by pregnancy or the arrival of a child.[56]

37. There is no question that pricing is importantly different from regulating. Legal systems have always treated the difference between requirements to pay in certain circumstances and specific requirements to do or refrain from certain acts as fundamental in the characterization of law: this was the basic difference between courts of common law, in their civil capacity, and of equity in the English legal system, and remains a fundamental divide in all areas of law.[57] Any reasonably accurate and precise formulation of its dominant characteristic would refer to this important feature of the *GGPPA*.

38. Further, as Saskatchewan concedes (¶25), it is a "fundamental aspect" of the *GGPPA* that it applies Part 1 and Part 2 to individual persons only in listed provinces and areas and that this listing occurs after a decision by the Governor in Council that it should occur "for the purpose of ensuring the pricing of greenhouse gas emissions is applied broadly in Canada at levels that the Governor in Council considers appropriate."[58] The "primary factor" to be considered in making this decision is the "stringency of provincial pricing mechanisms."[59] This is not an optional equivalency provision, as is the case with s. 10 of the *Canadian Environmental Protection Act*. To the contrary, it is a requirement that provincial laws be assessed based on a legal standard. If a province thinks that standard is unfairly or unreasonably applied, its remedy is judicial review of the Governor-in-Council's decision to list it. The provinces and territories are owed duties of fairness and reasonableness, which can be enforced in Federal Court. This "fundamental" feature

---

[54] *Goodwin v. British Columbia (Superintendent of Motor Vehicles)*, 2015 SCC 46, ¶¶ 29, 34
[55] *Chatterjee*, ¶ 23
[56] *Reference re Employment Insurance Act, ss. 22 and 23*, 2005 SCC 56, [2005] 2 SCR 669,¶¶ 34 and 75.
[57] Guido Calebresi & Douglas Melamed, "Property Rules, Liability Rules, and Inalienability: One View of the Cathedral", 85 *Harvard L. R.* 1089 (1972).
[58] *GGPA*, ss. 166(2) and 189(1).
[59] *GGPPA*, ss. 166(3) and 189(2).

of the *GGPPA* – that it allows the setting of minimum standards of stringency for pricing, rather than dictating how stringency is implemented – must also find its way into an appropriately precise description of its dominant characteristic or matter.

39. In the Saskatchewan Court of Appeal, British Columbia advanced the characterization that Chief Justice Richards, for the majority, took up, namely "establishing minimum national standards of price stringency for greenhouse gas emissions."[60] On reflection, while British Columbia continues to think this is the best description of the legal and practical *effects* of the law, Associate Chief Justice Hoy's formulation represented an improvement in that it also included a statement of the *purpose*: in her case, this was said to be to "reduce greenhouse gas emissions."[61] However, while this purpose is *accurate*, it is not quite as *precise* as it could be.

40. The goal of reducing emissions occurs within a context of urgent international negotiation over the allocation of a finite global commons, namely the capacity of the atmosphere to absorb greenhouse gases without fundamentally destabilizing the climate. The *GGPPA*'s Preamble refers to the UN Framework Convention on Climate Change, its goal of stabilizing global atmospheric concentrations of greenhouse gases, the 2015 Paris Agreement and its aim of stabilizing these concentrations at a level consistent with climate change of "well below" 2°C, and Canada's specific Nationally Determined Contribution commitments. The impossibility of reaching this target through business-as-usual and the need for a transparent and efficient benchmark for stringency of provincial efforts that motivated what became the *GGPPA*. Finally, the sponsoring minister told the House of Commons that "pricing pollution is making a major contribution to helping Canada meet its climate targets under the Paris Agreement" as a justification for the *GGPPA*. This intrinsic and extrinsic evidence shows that it is not just reducing greenhouse gas emissions in the abstract that was the purpose of the *GGPPA*, but, more specifically, allocating a portion of Canada's overall reduction targets (Saskatchewan Factum, ¶36).

41. British Columbia would therefore submit that the dominant characteristic of the *GGPPA* is *establishing minimum national pricing standards to allocate part of Canada's overall targets for greenhouse gas emissions reduction*. The formulations of Saskatchewan, Ontario and Canada

---

[60] *Reference re Greenhouse Gas Pollution Pricing Act*, 2019 SKCA 40 ["*Sask Reference*"], ¶123, Richards CJ (Jackson and Schwann JJA concurring).
[61] *Reference re Greenhouse Gas Pollution Pricing Act*, 2019 ONCA 544 ["*Ont Reference*"], ¶166, Hoy ACJ, concurring in the result.

all share the problems of not being sufficiently precise, including elements appropriate for the classification stage in the definition of the dominant characteristic or both.

"Provincial Inability" is About Inter-Provincial Collective Action Problems

42. At the classification stage, the issue is whether the "matter" – assuming it is not otherwise within federal jurisdiction under an enumerated power – is outside provincial authority because it is not "in the province" as all provincial matters must be. The test is set out in *Crown Zellerbach*: is the matter single, indivisible and distinct from those of provincial concern? Is the scale of the impact of recognizing it as one of national concern on provincial jurisdiction reconcilable with Canada's fundamental distribution of legislative power? [62] This is essentially a proportionality test: a matter of national concern must be indivisibly connected to the protection of extra-provincial interests and minimally impair provincial autonomy.

43. This is not a tautological inquiry into whether the federal law applies nationally, nor a formal question of whether a province could draft the same law. Rather, the question is whether the *nature of the problem* – particularly the extra-provincial effects of provincial inaction – gives a national approach indivisibility or leaves national standards a mere aggregate of provincial ones. As Justice Le Dain put it, whether a matter is indivisible "depends in large measure" on "what would be the effect on extra-provincial interests of a provincial failure to deal effectively with the control or regulation of the intra-provincial aspects of the matter."[63]

44. Like the concept of "national concern", it is important not to take the phrase "provincial inability" in its colloquial sense. The provinces are not literally *unable* to regulate radio frequencies or air travel, set up a national capital commission, address drug trafficking, regulate marine pollution, provide remedies against monopolies or address systemic securities risk. To say they are "jurisdictionally" unable to legislate in relation to those matters just restates the question. What is significant is the extent of the *extra-provincial* interests (those of other provinces, other countries or Indigenous peoples exercising their rights under s. 35 of the *Constitution Act, 1982*) that cannot be protected without federal action and whether the matter is narrowly tailored to address these.[64]

45. A national standard for a provincially-regulated activity where the most direct effects of

---

[62] *Crown Zellerbach*, pp. 431-432,
[63] *Crown Zellerbach*, ¶ 33.4.
[64] *Ont Reference*, ¶113.

inaction are felt within the boundaries of the province – whether motivated by a desire for uniformity or by a desire to see a particular policy result or even by the incidental externalities that are an inevitable part of living in a common country – would not do what provinces were *unable* to do, but what they have *decided* not to do. It would, to use Justice Beetz's words in the *Anti-Inflation Reference*, be a mere "aggregate" of provincial standards. So national standards for curriculum, investor protection, residential development, or local pollutants, for example, would not be matters of national concern.[65] However, where "the failure of one province to enact effective regulation would have adverse effects on interests exterior to the province,"[66] a minimum standard is no longer an aggregate of individual provincial standards, but becomes an indivisible "unity" necessary to protect the federation from devolving into a war of all against all. Provinces limited to legislating within their own borders are, in the constitutional sense, *unable* to address such a collective action problem.[67] So drug *treatment*, although obviously of vital importance, is not a matter to which the national dimensions/concern doctrine applies.[68] The failure of one province to provide adequate addiction treatment would not demonstrably "endanger the interests of another province" and should be remedied by the voters of that province. By contrast, a failure to prevent drug *trafficking* does endanger the interests of others, and is therefore within the general power.[69]

46. In the context of pollution, the "inability" is not of the emitting jurisdiction, but of the jurisdictions experiencing the *consequences* of the emissions. So in the 1976 *Interprovincial Co-operatives* case, the upstream provinces had jurisdiction over the discharge, the downstream province jurisdiction over the effects, and Parliament jurisdiction over the conflict that arose when a permitted discharge caused damage in another province: the fact the *upstream* province could stop pollution downstream allowed overlap, but did not displace federal authority.[70]

47. The collective action problem inherent in controlling cross-border pollutants makes them different from local pollutants for constitutional purposes. This has been found by *all* Supreme Court justices who have opined on the issue. In *Interprovincial Cooperatives*, Parliament could

---

[65] *Anti-Inflation Reference*, p. 458,
[66] *Schneider*, p. 131,
[67] Cooter, Robert & Siegel, Neil, "Collective Action Federalism: A General Theory of Article 1, Section 8" 63 *Stanford L.R.* 115 (2010)
[68] *R. v. Hauser*, [1979] 1 SCR 984
[69] *Schneider*.
[70] *Interprovincial Co-operatives*, p. 520, Ritchie J.

address conflicts about pollution of an inter-provincial river. In *Crown Zellerbach,* despite splitting in the result, all justices on the Court agreed that the general power provides a basis for federal authority in relation to protecting the global commons of the ocean from toxic discharges. In *Hydro-Québec*, Chief Justice Lamer and Justice Iacobucci (dissenting but not on this point) held that a crucial criterion of the national dimensions doctrine is "whether the failure of one province to enact effective regulation [of a cross-border pollutant] would have adverse effects on interests exterior to the province." [71] They held that regulation of diffuse, persistent and seriously toxic chemicals, such as PCBs, would have such effects, but that some substances regulated by the federal statute were not diffuse, persistent and seriously toxic, and would have primarily intra-provincial effect.

48. While competent to restrict or price greenhouse gas emissions that take place within its borders, British Columbia is constitutionally powerless to price emissions that take place in Saskatchewan or Ontario. In the case of local pollutants, this inability would accord with subsidiarity. Because British Columbians would not be materially affected by health or environmental effects of local pollution accumulations in those provinces, it *should* be up to the residents of Saskatchewan or Ontario to decide what, if anything, to do about it. But in the case of global pollutants, British Columbians cannot hold Saskatchewan or Ontario's government to account, but are affected anyway.

49. The mere possibility of inter-provincial cooperation is not enough to require extra-provincial interests to accept a "policy" decision not to raise levels of stringency so that the country can meet the national targets as part of a globally cooperative solution. What matters is whether - taking into account the inability of one legislature to bind a future one, and therefore the ability of provinces to resile from a negotiated pact - there is the constitutional ability to *sustain* a viable national scheme when truly national goals are at issue. [72]

50. The phenomenon of "carbon leakage" (i.e. arbitrage from provinces having a carbon price to those without) not only imposes a cost on provinces: it deprives them of a substantial portion of the environmental benefit for which they incurred that cost. Provinces have no constitutionally

---

[71] *R. v. Hydro-Québec*, [1997] 3 SCR 213, ¶76, Lamer CJC & Iacobucci J (dissenting).
[72] *Reference re* Securities Act, [2011] 3 SCR 837, 2011 SCC 66 [*2011 Securities Reference*], para. 120.

available solutions to prevent carbon leakage as against each other, or against other countries. Only the federal government can impose a common level of stringency, enact border adjustment charges or negotiate higher standards of stringency with competing jurisdictions. Carbon leakage is *not* the same as ordinary regulatory competition: Ontario's comparison to a national minimum wage (Ontario, ¶57) ignores that both the costs *and* benefits of a minimum wage are primarily felt within the province setting it. While no doubt any regulation has some costs, and another jurisdiction might make a different decision as to whether these outweigh its benefits, if *that same jurisdiction* must (primarily) pay the costs, then there is no collective action problem in the relevant sense.

51. General theories of environmental federalism provided by British Columbia distinguishes between *local* pollutants (where the harms occur in the same jurisdiction as the emissions) and *global* pollutants (where the harms occur everywhere, uncorrelated with the location of emissions).[73] Global pollutants create the same type of collective action problem between states that is faced by individuals in relation to local pollutants: the effect of altruistic self-sacrifice can be undermined by free riders. The evidence here is that sub-national governments will be better at setting a price for local pollutants, but without a centrally-imposed minimum, they will underprice global pollutants.[74] This economic distinction has constitutional force: it was precisely the distinction this Court made between the benefits of a *uniform* approach to individual securities transactions (not federal because the costs and benefits of uniformity are born by the province) and the need for minimum standards for truly *systemic* risks to cross-border capital markets.

52. Not all aspects of a global pollutant are within federal jurisdiction. If the pollutant is cumulative, the interests of other jurisdictions are triggered by the failure of a province to act with sufficient stringency, but not in how it implements a given level of stringency. British Columbia does not care if others enact *its* pricing system if *their* pricing systems are of comparable ambition.

GGPPA Addresses Provincial Inability Consistent with Federalism's Balance

53. Since Parliament could have simply imposed a price in all provinces under its authority over "any mode or system of taxation" (s. 91(3)), it makes little sense to say a lesser power to

---

[73] Richard Revesz, "Federalism and Interstate Environmental Externalities" 144 *U. Penn. L. R.*: 2341 (1996); Daniel Farber, "Environmental Federalism in a Global Economy" 83 *Virginia L. R.* 1283 (1997).

[74] Maureen Cropper & Wallace E. Oates, "Environmental Economics: A Survey", pp. 694-5, J. Parker Affidavit #1, Ex. B, **Respondent's Record, vol. 7, pp. 112-113**.

establish minimum standards of stringency for *provincial* pricing would endanger the fundamental federal-provincial balance. Despite the rhetoric of "supervision", all the federal executive is empowered to do is to make sure that provinces and territories do not offload their responsibilities for adequate stringency onto others. As long as they respect this constraint of common life, they can design the pricing system that suits them – or accept the federal backstop – at their option.

54. In the Ontario Court of Appeal, Ontario was unable to identify a single provincial statute that would be rendered inoperative by the *GGPPA*. By contrast, *not* recognizing federal competence to address minimum standards of stringency for pricing greenhouse gas emissions would imperil the sovereignty of those provinces that have acted. It would deny their citizens any democratic forum in which to seek to obtain comparably stringent measures from other provinces, and expose them to harm due to carbon leakage they cannot remedy in an economic union.

55. This is why we have a federal level of government. The framers of Confederation could not have predicted the impact of industrialization on the global climate system. But they knew all about collective action problems rendering provincial action impracticable. They were committed to the "British" principle that *some* legislative body could "make or unmake any law whatsoever." This was why they inserted the general residual power and thereby gave Parliament authority over matters not falling within provincial competence because they were not matters "in the province." Minimum standards for setting a provincial price for using up a global commons - and thereby contributing to the dimensions of a pollutant that threatens human life - qualify, if anything would. If our generation fails the test the climate crisis presents us, it will not be because their desire to be federally united under the principles of parliamentary democracy made success impossible.

PART IV: COSTS

56. British Columbia does not seek costs and asks that no costs be awarded against it.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 27th OF JANUARY, 2020

_____

J. Gareth Morley and Jacqueline Hughes
Counsel for the Attorney General of British Columbia

PART V:
LIST OF AUTHORITIES

CASES	PARAGRAPH
14957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town), 2001 SCC 40	21
Air Canada v. Ontario (LCB), [1997] 2 SCR 581	33
Canadian Western Bank v. Alberta, [2007] 2 SCR 3, 2007 SCC 22	12
Chatterjee v. Ontario (Attorney General), 2009 SCC 19, [2009] 1 SCR 624	11, 26, 36
Desgagnés Transport Inc. v. Wärtsilä Canada Inc., 2019 SCC 58	26, 35
Goodwin v. British Columbia (Superintendent of Motor Vehicles), 2015 SCC 46	36
Hodge v. The Queen (1883), 9 AC 117 (JCPC)	18
Interprovincial Co-operatives Ltd. et al. v. R., [1976] 1 SCR 477.	20, 24, 46, 47
Irwin Toy Ltd. v. Quebec (AG), [1989] 1 SCR 927	33
Johannesson v. Municipality of West St. Paul, [1952] 1 SCR 292	27
Munro v. National Capital Commission, [1966] SCR 663	27, 33
New State Ice Co. v. Liebmann, 285 U.S. 262 (1932), Brandeis J (dissenting)	4

CASES	PARAGRAPH
Andrew Leach & Eric Adams, "Seeing Double: Peace, Order, and Good Government, and the Impact of Federal Greenhouse Gas Emissions Legislation on Provincial Jurisdiction" *Constitutional Forum* (forthcoming)	33
Gerald Le Dain, "Sir Lyman Duff and the Constitution" 12 *Osgoode Hall L. J.* 261 (1974)	21
William Lederman, "Unity and Diversity in Canadian Federalism", 53 *Can. Bar. Rev.* 596 (1975)	21, 24
Richard Revesz, "Federalism and Interstate Environmental Externalities" 144 *U. Penn. L. R.*: 2341 (1996)	51
E.C.S. Wade, Introduction to A.V. Dicey, *The Law of the Constitution*,10th ed. (1959)	18
Speech of the Hon. John A. Macdonald to the Legislative Assembly of the Province of Canada, 6 February, 1865 in ed. P.B. Waite *Confederation Debates in the Province of Canada, 1865*. McLelland and Stewart, 1963, p. 44.	16