C.A. No. CACV3239

IN THE COURT OF APPEAL FOR SASKATCHEWAN

IN THE MATTER OF THE *GREENHOUSE GAS POLLUTION PRICING ACT,* Bill C-74, Part 5

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

BETWEEN

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Party Pursuant to Section 4 of *The Constitutional Questions Act, 2012*

and

ATTORNEY GENERAL OF CANADA

Intervenor Pursuant to Section 5(2) of *The Constitutional Questions Act, 2012*

and

ATTORNEY GENERAL OF ONTARIO, ATTORNEY GENERAL OF NEW BRUNSWICK and ATTORNEY GENERAL OF BRITISH COLUMBIA

Intervenors Pursuant to Section 6 of *The Constitutional Questions Act, 2012*

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PART I – INTRODUCTION

1. The Intervenor, Attorney General of New Brunswick ("New Brunswick") agrees with the factum of the Attorney General of Saskatchewan ("Saskatchewan") with respect to the nature of this case and generally agrees with the climate data submitted by the Attorney General of Canada ("Canada"). This reference should not be a forum for those who deny climate change; nor should it be a showcase about the risks posed by greenhouse gas emissions ("GHG emissions"). The supporting data is relevant only to the extent that it is meaningfully connected to the constitutional question at issue.

2. Canada has provided "real, measured, and documented" data, statistics and examples of international accord all of which impress with a palpable resolve to lower the nation's environmental footprint. New Brunswick does not take issue with that narrative or with the importance of the overall subject matter.

3. What New Brunswick disputes is the way in which the federal Parliament has apportioned its resolve to diminish GHG emissions by imposing "backstop legislation". Parliament's best intentions have resulted in it applying subjective criteria where uniform and objective standards previously were required to support its residual constitutional authority. The federal Parliament has substituted a vague "stringency" standard for any meaningful cooperative model for GHG emissions reduction. Much of the federal initiative has been justified by providing the appearance of support for local solutions, but in some cases those solutions have been rejected without regard for local economic realities or constitutional authority. The resulting patchwork, the result of deep intrusion into matters ordinarily within local authority, creates an

unprecedented model of federal interjurisdictional management where no such model should exist. New Brunswick says that much of it is unconstitutional.

4. New Brunswick therefore concurs with and adopts Saskatchewan's submissions. As intervenor, New Brunswick will endeavour to add a perspective not otherwise provided.

PART II – JURISDICTION

5. For the reasons set out in Saskatchewan's Factum, New Brunswick agrees that this Court has jurisdiction to provide an advisory opinion on the question stated by the Lieutenant Governor in Council, being whether the *Greenhouse Gas Pollution Pricing Act*[1] (*"Act"*) is unconstitutional in whole or in part.

PART III – SUMMARY OF FACTS

6. New Brunswick agrees with the facts as presented by Saskatchewan. It further notes that provincial reactions to Canada's position, as Canada's position evolved, have also evolved during the time of the Vancouver Declaration through to the release of the Pan-Canadian Framework on Clean Growth and Climate Change. Some jurisdictions saw fit to sign on to the latter Framework, while some did not. New Brunswick proceeded by developing a plan responsive to the Framework document in a manner that respected local concerns and economic realities.

7. New Brunswick's plan was rejected. The federal reasoning for the rejection was that it did not conform to a federal acceptance criterion or "central pillar" of the *Act*. New Brunswick's plan apparently did not impose a sufficiently stringent

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[1] *Greenhouse Gas Pollution Pricing* Act, SC 2018, c 12, s 186.

carbon pricing model satisfactory to the Governor in Council. Whereas Saskatchewan had "steadfastly refused to impose a carbon tax on its people and businesses"[2], New Brunswick chose to repurpose a portion of an existing motive fuel tax into a Climate Change Fund under new legislation[3] that would keep pace with the carbon tonnage cost increases thru to 2022-23. A portion of the Preamble to the *Climate Change Act* states:

> The Climate Change Action Plan provides a clear path forward for reducing greenhouse gas emissions while promoting economic growth and increasing New Brunswick's resilience to climate change through adaptation. Among other things, the action plan calls for the implementation of a carbon pricing mechanism that takes into account New Brunswick's unique economic and social circumstances, including trade-exposed, energy intensive industries, low-income families, consumers and businesses.
>
> Carbon pricing is an efficient and effective way to reduce greenhouse gas emissions and will play an important role in New Brunswick's transition toward a low carbon economy. However, carbon pricing alone is not expected to be sufficient to meet the Government of New Brunswick's greenhouse gas emission target levels. Additional actions will be needed. Consequently, the Government of New Brunswick will pursue complementary initiatives to support and promote the transition to a low-carbon economy.

PART IV – POINTS IN ISSUE

8. New Brunswick agrees with Saskatchewan that the central issue is whether the *Act* is unconstitutional in whole or in part. New Brunswick will argue that the *Act* is fundamentally inconsistent with the jurisdiction of Parliament to legislate

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[2] Factum of the Attorney General of Saskatchewan, dated July 30, 2018 at para. 11.
[3] *Climate Change Act*, SNB 2018, Ch 11.

for the Peace, Order and Good Government of Canada pursuant to section 91 of the *Constitution Act, 1867* ("p.o.g.g." or "the p.o.g.g. power").

9. The factums of Saskatchewan and Canada and the Reply Factum of Saskatchewan indicate that the true nature of the constitutional issue has only recently been refined to highlight the p.o.g.g. authority.[4] Any uncertainty was resolved by October 29, 2018, when p.o.g.g. became central to Canada's argument.[5] Saskatchewan's Reply Factum contains numerous cogent constitutional arguments addressing the p.o.g.g. power and New Brunswick agrees with and adopts those submissions. As intervenor, New Brunswick does not intend to make submissions redundant to those of Saskatchewan. Also, in keeping with the principle that intervenors should provide a unique perspective, and while also acknowledging that Saskatchewan's submissions persuasively cover the field, New Brunswick will explore in greater detail a singular aspect of the national dimension inherent in the p.o.g.g. power.

PART V – ARGUMENT

I. Basic Premise

10. The main proposition used in this factum is simple and begins with Le Dain J.'s statement regarding the requirement of distinctiveness in *R. v. Crown Zellerbach Canada Ltd.* ("*Crown Zellerbach*"):

> For a matter to qualify as a matter of national concern ... it must have a singleness, distinctiveness and indivisibility that clearly distinguishes it from matters of provincial concern and a scale of impact on provincial jurisdiction that is reconcilable with the

[4] Reply Factum of the Attorney General of Saskatchewan, dated July 30, 2018 at para 15. [Saskatchewan Reply]
[5] Factum of the Attorney General of Canada, dated October 29, 2018 at Part V

> fundamental distribution of legislative power under the Constitution.[6]

11. Mindful of Le Dain J.'s words, Canada's assertion that GHG emissions are sufficiently distinct will be analyzed in the light of the legal analysis in *Crown Zellerbach* – that the distinctive entity must possess a readily ascertainable scope and constraint. At paragraph 90 of its Factum, Canada has equated GHG emissions with *Crown Zellerbach's* marine pollution. New Brunswick submits that this equation is flawed. GHG emissions alone may seem sufficiently nebulous to be indivisible, but as will be discussed, the "essential indivisibility" found in *Crown Zellerbach* rested upon dynamic elements and was not a monolithic concept.

12. The fundamental organizing concept in *Crown Zellerbach* is marine pollution. Marine pollution possesses characteristics suggesting a sense of place and an effect – matter and action – from which ascertainable and reasonable limits exist. In contrast, GHG emissions lack these internal characteristics and have no boundary. In this case, the appropriate organizing concept would be *the reduction of GHG emissions*. By using that organizing concept, it becomes clearer that the federal Parliament exceeded what might have been an appropriate zone of its residual authority when it chose to impose upon the provinces the means of GHG reduction (i.e., carbon pricing). In so doing, the federal Parliament ventured significantly beyond the essential distinctiveness necessary to rationalize a national concern; ventured into heads of provincial power on a scale of impact that cannot be reconciled with the fundamental distribution of legislative power under the Constitution.

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[6] *R v Crown Zellerbach Canada Ltd.*, [1988] 1 SCR 401; 49 DLR (4th) 161. [*Crown Zellerbach*]

13. That is, by theorising a nexus between GHG emissions and the *Act* instead of commencing with a national concern that would possess the requisite indivisibility, the federal Parliament started from the wrong footing and reached too far when it assumed control over the means of GHG emissions reduction.

II. General Argument

14. There is little doubt that it is within the authority of provinces to create carbon pricing measures tailored to local circumstance. To date, there has been no suggestion from the federal government that provinces lack the power to do so and there has been no suggestion from any province that a local solution would be beyond local authority. Provincial authority over property and civil rights and matters of a local or private nature provide a broad authority to craft a carbon reduction strategy. Authority over direct taxation, provincial Crown lands, municipalities, renewable and non-renewable natural resources refine the broad authority. A variety of heads of provincial constitutional jurisdiction could be deployed.

15. General authority to regulate local enterprise within provincial boundaries has been an essential component of economic development since Confederation. The principle has been referenced repeatedly in jurisprudence including the *Anti-Inflation Reference*, where Justice Beetz noted at page 441:

> The control and regulation of local trade and of commodity pricing and of profit margins in the provincial sectors have consistently been held to lie, short of a national emergency, within exclusive provincial jurisdiction. [7]

[7] *Re: Anti-Inflation Act*, [1976] 2 SCR 373; [1976] SCJ No 12. [*Anti-Inflation*]

16. On the other hand, it is not as straightforward to explain or understand federal intrusion into the enumerated heads of provincial competence. Perhaps this is the reason why Canada has settled upon its residual p.o.g.g. authority to justify the *Act*.

17. The *Act* and immediate issues share several characteristics with the case of *Crown Zellerbach*. Saskatchewan and Canada say much about this case. New Brunswick will address one of the *Act*'s central tenets – carbon pricing – using *Crown Zellerbach* for comparative analysis of the criteria that justify the use of the p.o.g.g. power.

18. The national concern doctrine as within p.o.g.g. is extensively canvassed by Canada commencing at paragraph 69 of its Factum and by Saskatchewan at paragraph 8 of its Reply Factum. Those submissions are persuasive arguments; repeating them would not be helpful, but expanding upon one area could provide some assistance.

19. The first sentence in paragraph 90 of Canada's Factum states: "*Like marine pollution in Crown Zellerbach, GHG emissions possess sufficiently distinct and separate characteristics to make them amenable to Parliament's residual power.*" This seems like a fair comparison from a relatively distant vantage point, but does it withstand closer scrutiny?

20. In *Crown Zellerbach*, s. 4(1) of the *Ocean Dumping Control Act*[8] gave the federal Parliament a broad authority to control marine pollution, just as here the *Act* gives the federal Parliament authority to control GHG emissions. *Crown*

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[8] *Ocean Dumping Control Act*, SC 1974-75-76, c 55 [*Ocean Dumping Control Act*].

Zellerbach is a slim majority opinion, split as to whether the subject matter was sufficiently distinct, singular and indivisible to make it distinguishable from matters of provincial concern.[9] The majority and dissenting opinions concurred that consideration had to be given to the result that upholding the p.o.g.g. power would have on the constitutional balance of power. Both opinions considered the necessary balance through addressing principles of federalism. It is admittedly tempting to focus upon La Forest J.'s dissenting opinion and argue that the immediate circumstances can be distinguished from the majority analysis. However, as noted above, these submissions are intent on dealing with the operational concept within the requisite "singleness, distinctiveness and indivisibility."

21. The majority in *Crown Zellerbach* held that a prohibition against dumping any substance in the sea was acceptably within the ambit of the challenged legislation. The definition of "sea" included unnavigable internal provincial waters, which for most other purposes would be a matter of provincial competence. Therefore, for the impugned legislation to be constitutional, and in consideration of the national concern doctrine, it was necessary for the Court to isolate a subject matter that could be exclusively controlled by the federal government as *distinct* from provincial authority. A 4:3 majority opinion of the Court found the necessary exclusivity to qualify the subject matter as a national concern under the p.o.g.g. power.

22. To arrive at that finding the Court considered United Nations' reports, conventions and rules on the issue of demarcation between internal marine waters and territorial seas. It was found that the general demarcation for internal marine waters was "those which lie landward of the baseline of the territorial

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[9] Saskatchewan Reply *supra* 4, at para 25.

sea, as contained un the *United Nations Convention on the Law of the* Sea (1982)."[10] From this, the Court determined that the political lines were sufficiently blurred such that dumping in one would have a pollutant effect upon the other. Therefore, this aqueous mix as borne by the ebb and flow of currents was tantamount to an *indivisibility* as between internal marine pollution and coastal water pollution, or an "obviously close relationship"[11]. That opinion was bolstered by the appellant's submissions as follows:

> ... there is much force, in my opinion, in the appellant's contention that the difficulty of ascertaining by visual observation the boundary between the territorial sea and the internal marine waters of a state creates an unacceptable degree of uncertainty for the application of regulatory and penal provisions. This, and not simply the possibility or likelihood of the movement of pollutants across that line, is what constitutes the essential indivisibility of the matter of marine pollution by the dumping of substances.[12]

23. Therefore, the Court constructed an *indivisible* subject matter out of relative uncertainty. The political boundaries were blurry and even if the boundaries were razor-sharp, it remained that the effect of the moon, tides and currents conspired to make a pollutant's journey from one realm of water into the other a matter of great uncertainty. Blurry boundaries and aimlessly wandering flotsam and jetsam created an indecipherable *thing* that was indivisible from a control perspective. Something thrown in that *thing* would be thrown into a legal assimilation from which all contents would be legally indivisible.

24. One might attempt to conflate GHG emissions in extraterritorial space in a similar fashion; however, the exchange of waters in *Crown Zellerbach*, even

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[10] UN General Assembly, *Convention on the Law of the Sea*, 10 December 1982 at para 38.
[11] *Crown Zellerbach*, supra 6, at para 38.
[12] *Ibid.*

mindful of the uncertain jurisdictional lines of demarcation, did contain overall boundaries and were observed in tandem with polluting activities. Here, we are confronting an *Act* that crosses over into clear provincial territory by unilaterally determining that there is but one way out of the problem with a carbon-pricing mechanism which by its nature unduly infiltrates matters of property and civil rights in the provinces and other areas of local competence.

25. In *Crown Zellerbach* the Court was unambiguous that the heralded *indivisibility* was in fact not a monolithic creation. The Court noted that the matter under consideration remained dynamic. For jurisdictional analysis, *place* and *impact* can be gleaned as constituent elements of indivisibility. An operational concept with dynamic elements is at play:

> This, and not simply the possibility or likelihood of the movements of pollutants across that line, is what constitutes the essential indivisibility of marine pollution by the dumping of substances.
> (underlining added)

A ***matter to control*** (marine pollution) and an ***action*** (the dumping of substances) became a single, distinctive and indivisible concept within the ambit of the *Ocean Dumping Control Act.*[13]

26. Then the Court's analysis shifts to the difference between marine and fresh waters – paragraph 39 of *Crown Zellerbach* highlights this as the ultimate objective. The question is: "*whether the pollution of marine waters by the dumping of substances is sufficiently distinguishable from the pollution of fresh waters by such dumping to meet the requirement of indivisibility.*"[14] The finding appears to be based largely

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[13] *Ocean Dumping Control Act, supra* 8.
[14] *Crown Zellerbach, supra* 6, at para 39.

upon a U.N. Report which emphasizes the "*differences in the composition and action of marine waters and fresh waters* [with] *its own characteristics and considerations that distinguish it from fresh water pollution.*"[15]

27. As a result, fresh water pollution appears to have remained within the domain of provincial authority, leaving the "*essential indivisibility of the matter of marine pollution by the dumping of substances*"[16] with sufficient characteristics to have it qualify as a national concern.

28. Two observations are in order. First, the matter of essential indivisibility contained dynamic elements: a ***matter to control*** (marine pollution) combined with an ***action*** (the dumping of substances). Second, finding of a sufficient distinction between fresh and salt waters enabled the Court to find a satisfactory federal limitation on the application of the *Ocean Dumping Control Act*.[17] That limitation was crucial in enabling the Court to find the national concern. Paragraph 39 concludes as follows:

> Moreover, the distinction between salt water and fresh water as limiting the application of the *Ocean Dumping Control Act* meets the consideration emphasized by a majority of this Court in the *Anti-Inflation Act* reference--that in order for a matter to qualify as one of national concern falling within the federal peace, order and good government power it must have ascertainable and reasonable limits, in so far as its impact on provincial jurisdiction is concerned. [18]
>
> (underlining added)

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[15] *Ibid.*
[16] *Ibid* at para 38.
[17] *Ocean Dumping Control Act, supra* 8.
[18] *Crown Zellerbach, supra* 6, at para 39.

29. Accordingly, the Court relied on evidence of "separate characteristics" as between salt and fresh water as a means of (1) creating a legal distinction, and (2) creating a reasonable limitation on the federal power, which, the previous *Anti-Inflation Act* case emphasized as essential ("it must have").[19] And behind this distinction was a dynamic and "essentially indivisible" ***matter to control*** (marine pollution) combined with an ***action*** (the dumping of substances).

30. The inherent dynamism is apparent even without attempting a nuanced analysis of *Crown Zellerbach*. The "marine pollution", is comprised of a subject preceded by a modifier and they act <u>together</u> to form the indivisible proscriptive matter addressed in the *Ocean Dumping Control Act*.[20]

31. Additionally, the prohibition in the *Ocean Dumping Control Act* was a ban against all non-permitted dumping. The first paragraph of *Crown Zellerbach* states that the impugned legislation prohibited, "the dumping of any substance at sea except in accordance with the terms and conditions of a permit." Applying those circumstances (a blanket prohibition) to the immediate matter would result in a ban on the release of any non-permitted GHG emissions. This is not the case, but the comparison should not be dismissed. It is reasonable to expect a correlation between uniform regulation and distinctive subject matter. Less systematic regulation and subjective acceptance criteria, such as that found in the *Act*, is less amenable to a union with any indivisible and distinctive matter separate from provincial jurisdiction. That GHG emissions are "sufficiently distinct … to make them amenable to Parliament's residual power" should be questioned.

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[19] *Anti-Inflation, supra 7.*
[20] *Ocean Dumping Control Act, supra* 8.

32. The *indivisibility* refers to "an identity which made it distinct from provincial matters,"[21] or "a single indivisible matter of national interest and concern lying outside the specific heads of power assigned under the Constitution."[22] This was found to exist in *Crown Zellerbach* in the face of a relatively howling dissent. That dissent is instructive here, for the purpose of contrasting "GHG emissions" with "marine pollution" to illustrate where *indivisibility* co-exists with "ascertainable and reasonable limits."

33. The ability to determine the "ascertainable and reasonable limits in so far as provincial jurisdiction is concerned," depends on a reasonable linkage between matter and action, for the purposes of determining a reasonable proscription limits. For example, in *Crown Zellerbach's* dissenting opinion, La Forest J. considers the obvious linkage of d*umping noxious fluid into coastal waters*.[23] A less obvious linkage would be *depositing noxious solid material inland*,[24] which would require "cogent proof" of causation. "Cogent proof" in such a case might be evidence of leachate from the hypothetical solid matter, escape of deleterious substance into the water table and eventual escape of substances into the environmental zone of federal competence.

34. Whether the linkage is obvious or more distant, it is submitted that a reasonable nexus must exist between the elements to enable them to be bundled into an "indivisible and distinct" matter of national concern.

35. Canada's unqualified assertion that "*GHG emissions possess sufficiently distinct and separate characteristics*" appears to be a monolithic offering – one that

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[21] *Crown Zellerbach, supra* 6 at para 28.
[22] *Ibid* at para 68.
[23] *Ibid* para 63.
[24] *Ibid.*

does not contemplate any inherent or essential sub-characteristics let alone any nexus between them. From that perspective, almost anything could be rationalized as distinct; the ability to differentiate is illusory and the default is inevitably diffusiveness. GHG emissions without more lacks context. Marine pollution was married with a prohibition on any dumping and from this a constitutionally acceptable indivisibility from provincial concerns was born. What is GHG emissions married with and what is the constitutionally acceptable indivisibility from provincial concerns?

36. Given the construction of the Act, the partner to GHG emissions appears to be carbon pricing, a stated core principle in the *Act* and the apparent dominant factor in the enigmatic stringency analysis. Carbon pricing must be an element of the essential indivisibility in fulfillment of the national concern doctrine.

37. New Brunswick submits that carbon pricing can never be an element of that which is distinct and indivisible for constitutional purposes. Unlike the blanket prohibition in *Crown Zellerbach*, controlling GHG emissions and the imposition of particularized carbon pricing has no proxy to "the essential indivisibility of marine pollution by the dumping of substances." The sustainable comparison would be *the essential indivisibility GHG emissions and the need to reduce those emissions*. But the federal Parliament went well beyond that and delivered an *Act* that focussed not on the need to reduce emissions, but on the means of emissions reduction through carbon pricing. It is a step too far.

38. It is submitted that there is no construction that can be given to GHG emissions and carbon pricing together that would suffice to collapse them into the required singularity distinct from provincial competence. The ability to reduce greenhouse gas emissions by an ascertainable amount can be ascertained; it is measurable and

objectively requires that the megatonnage of emissions being released into the environment be reduced. That is the national concern.

39. Instead of recognizing the national concern, Canada has relied upon GHG emissions – a construct that defies any internalized analysis or, unlike marine pollution, possesses no inherent jurisdictional horizons. By doing this Canada has invited the scrutinizer to forego or ignore any analysis into the *Anti-Inflation Act's* "ascertainable and reasonable limits". However, any analysis regarding the reasonable limits of the *Act* cannot be contemplated until the national concern is properly stated.

40. In conclusion, it is submitted that the *Act* overreaches and invades provincial constitutional competence to an unacceptable degree. The jurisdictional balance has been upset. Per La Forest J. in *Crown Zellerbach*, "it requires a quantum leap to find constitutional justification for the provision."[25] The *Act* has substituted carbon pricing for carbon megatonnage reduction. If the Act had stopped short of its core principle and focussed upon the national concern of GHG emissions while also leaving the means of doing so to the provinces, principles of federalism would more likely have been respected. Going further and regulating human behaviour simply invades a host of provincial concerns without regard for enumerated heads of power.

41. Even though the *Act* imposes an unbalanced vision of federalism and ignores a range of constitutionally-acceptable solutions, this is not to say that carbon pricing is an untenable method of achieving a reduction in GHG emissions. Incentivizing behaviour may well be one of the most appropriate methods. However incentivizing behavioural change in these circumstances *prima facie*

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[25] *Crown Zellerbach*, *supra* 6 at para 66.

requires incursions into matters properly left to provincial governments. Not all well-intentioned approaches are necessarily constitutional. Recently in *R. v. Comeau,* the Supreme Court considered principles of federalism in the context of s. 121 of the *Constitution Act*, 1867. At paragraph 83:

> [83] Thus, the federalism principle does not impose a particular vision of the economy that courts must apply. It does not allow a court to say, "This would be good for the country, therefore we should interpret the Constitution to support it." Instead, it posits a framework premised on jurisdictional balance that helps courts identify the range of economic mechanisms that are constitutionally acceptable. The question for a court is squarely constitutional compliance, not policy desirability: see, e.g., *Reference re Securities Act*, at para. 90; *Operation Dismantle Inc. v. The Queen*, 1985 CanLII 74 (SCC), [1985] 1 S.C.R. 441, at pp. 471-72, per Wilson J.; *Reference re Anti-Inflation Act*, 1976 CanLII 16 (SCC), [1976] 2 S.C.R. 373, at pp. 424-25, per Laskin C.J. Similarly, the living tree doctrine is not an open invitation for litigants to ask a court to constitutionalize a specific policy outcome. It simply asks that courts be alert to evolutions in, for example, how we understand jurisdictional balance and the considerations that animate it. [26]

42. Furthermore, the language in the Preamble to the *Act*, dedicated to elevating carbon pricing as demonstrably necessary, does not suffice to save this jurisdictional misstep. Carbon pricing studies and ratification of accords do not transform carbon pricing in these circumstances into a constitutionally compliant outcome. This "core element" of the *Act* is a way, but unless it is part of an indivisible way, it is not the only way. By its arbitrary command of the topic it overreaches and captures too much of what is provincial legislative capacity. In so doing the *Act* causes a stress on Canadian federalism and sets

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[26] *R v Comeau*, 2018 SCC 15; [2018] 1 SCR 342 at para 83.

the stage for further incursions whenever similarly constructed (inter)national issues arise.

43. It is submitted that "reasonable and ascertainable limits" in these circumstances must stop short of an imposed carbon pricing mechanism. In that regard, the first nine recitals in the Preamble to the *Act* appear to be consistent with generally accepted science on the issue of global warming. That said, the remainder of the Preamble foreshadows a singular carbon reduction scheme of questionable constitutional merit that should have been left to the provinces to orchestrate. Instead of properly delineating between federal and provincial spheres of competence, the Preamble's remainder purports to give the federal Parliament authority over pricing schemes and behavioural change, which, by their nature, cannot exist within the constituents or boundaries of the indivisibility required to invoke the p.o.g.g. power.

PART VI – RELIEF SOUGHT

44. For these reasons the Attorney General for New Brunswick agrees with the Attorney General for Saskatchewan that the Act is unconstitutional.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 22nd day of January, 2019.

William E. Gould
Counsel for the Intervenor,
The Attorney General of New Brunswick

PART VII – AUTHORITIES

Legislation
Climate Change Act, SNB 2018, Ch 11
Greenhouse Gas Pollution Pricing Act, SC 2018, c 12, s 186
Ocean Dumping Control Act, SC 1974-75-76, c 55
Cases
Re: Anti-Inflation Act, [1976] 2 SCR 373; [1976] SCJ No 12
R v Comeau, 2018 SCC 15; [2018] 1 SCR 342
R v Crown Zellerbach Canada Ltd., [1988] 1 SCR 401; 49 DLR (4th) 161
Secondary Sources
UN General Assembly, *Convention on the Law of the Sea*, 10 December 1982