

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 UNDER *THE CONSTITUTIONAL
QUESTIONS ACT*, 2012, SS 2012, c C-29.01

BETWEEN:

ATTORNEY GENERAL OF SASKATCHEWAN

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

– and –

ATTORNEY GENERAL OF CANADA

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

FACTUM AND RECORD OF THE INTEVERNER,
CANADIAN PUBLIC HEALTH ASSOCIATION

January 25, 2019

Gowling WLG (Canada) LLP
Barristers & Solicitors
1 First Canadian Place
100 King Street West, Suite 1600
Toronto ON M5X 1G5
Fax: 416-862-7661

Jennifer L. King (#54325R)
Tel: 416-862-5778
jennifer.king@gowlingwlg.com

Michael Finley (#65496C)
Tel: 416-369-6990
michael.finley@gowlingwlg.com

Heather Fisher (#75006L)

Tel: 416-369-7202

heather.fisher@gowlingwlg.com

Counsel for the Intervener, Canadian
Public Health Association

TO:

**ATTORNEY GENERAL OF
SASKATCHEWAN**

Ministry of Justice
Constitutional Law Branch
820-1874 Scarth Street
Regina, SK, S4P 4B3

**P. Mitch McAdam, QC, and
Alan Jacobson**

Phone: 306-787-7846

Fax: 306-787-9111

Email: mitch.mcadam@gov.sk.ca /
alan.jacobsen@gov.sk.ca

Counsel for the Attorney General of
Saskatchewan

AND TO:

**THE ATTORNEY GENERAL OF
ONTARIO**

Constitutional Law Branch
Civil Law Division
720 Bay Street, 4th Floor
Toronto, ON M7A 2S9

**Josh Hunter / Padraic Ryan / Andrea
Bolieiro**

LSO Nos.: 49037M / 61687J / 60776V

Tel: (416) 326-3840 / (416) 326-0131 /
(416) 326-0296

Fax: (416) 326-4015

E-mail: joshua.hunter@ontario.ca
/padraic.ryan@ontario.ca
/andrea.bolieiro@ontario.ca

Counsel for the Attorney General of
Ontario

AND TO:

ATTORNEY GENERAL OF CANADA

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

**Sharlene Telles-Langdon / Brooke
Sittler/ Mary Matthews / Neil Goodridge /
Ned Djordjevic**

Tel.: (204) 983-0862

Fax: (204) 984-8495

E-mail: sharlene.telles-
langdonAustice.gc.ca

Counsel for the Attorney General of
Canada

AND TO:

**ATTORNEY GENERAL OF NEW
BRUNSWICK**

Office of the Attorney General
Province of New Brunswick
675 King Street, Room 2078, Floor 2
PO Box 6000
Fredericton, NB, E3B 5H1

William E. Gould / Isabelle Lavoie Daigle

Tel: 506-453-2222

Fax: 506-453-3275

Email: William.Gould@gnb.ca /
Isabel.LavoieDaigle@gnb.ca

Counsel for the Attorney General of New
Brunswick

**AND TO:
ATTORNEY GENERAL OF BRITISH
COLUMBIA**

British Columbia Ministry of Attorney
General
Legal Services Branch
1001 Douglas Street
Victoria, BC V8W 9J7

J. Gareth Morley

Tel: 250-952-7644
Fax: 250-356-9154
Email: gareth.morley@gov.bc.ca

Counsel for Attorney General of British
Columbia

**AND TO:
SASKATCHEWAN POWER
CORPORATION AND
SASKENERGY INCORPORATED**

McKercher LLP
374 Third Avenue South
Saskatoon SK S7K 1M5

David M. Stack

Tel: 306-653-2000
Fax: 306-653-2669
Email: d.stack@mckercher.ca

Counsel for Saskatchewan Power
Corporation and SaskEnergy Incorporated

**AND TO:
CANADIAN ENVIRONMENTAL LAW
ASSOCIATION AND ENVIRONMENTAL
DEFENCE CANADA INC.**

1500 - 55 University Ave.
Toronto, ON M5J 2H7

**Jacqueline Wilson (60330R) /
Theresa McClenaghan (27810F)**

Tel: 416-960-2284 ex 7213
Fax: 416-960-9392
Email: jacqueline@cela.ca /
theresa@cela.ca

Counsel for Canadian Environmental Law
Association
and Environmental Defence Canada Inc.

**AND TO:
CANADIAN TAXPAYERS FEDERATION**

Crease Harman LLP
800-1070 Douglas Street
Victoria, BC V8W 2C4

R. Bruce E. Hallsor, QC

Tel: 250-388-5421
Fax: 250-388-4294
Email: hallsor@crease.com

AND

Kanuka Thuringer LLP
1400-2500 Victoria Avenue

Alexander Shalashniy

Regina, SK S4P 3X2
Tel: 306-525-7200
Email: ashalashniy@ktllp.ca

Counsel for the Canadian Taxpayers
Federation

**AND TO:
ATHABASCA CHIPEWYAN FIRST
NATION**

Ecojustice Environmental Law Clinic at the
University of Ottawa
1 Stewart Street, Suite 216
Ottawa, ON K1N 6N5

Professor Amir Attaran
Tel: 613-562-5800 x 3382
Fax: 613-562-5319
Email: aattaran@ecojustice.ca

AND
Woodward & Company Lawyers LLP
200-1022 Government Street
Victoria, BC V8W 1X7

Matt Hulse
Tel: 250-383-2356
Fax: 250-380-6560
Email:
mhulse@woodwardandcompany.com

Counsel for Athabasca Chippewyan First
Nation

**AND TO:
Ratcliff & Company LLP**
Barristers & Solicitors
500 – 221 West Esplanade
North Vancouver, BC V7M 3J3

Nathan Hume/ Emma K. Hume
Phone: 604-988-5201
Fax: 604-988-1352
Email: nhume@ratcliff.com
ehume@ratcliff.com

Counsel for the Intergenerational Climate
Coalition

**AND TO:
ASSEMBLY OF FIRST NATIONS**
55 Metcalfe Street, Suite 1600
Ottawa, ON K1P 6L5

Stuart Wuttke / Victor Carter
Tel: 613-241-6789
Fax: 613-241-5808
Email: swuttke@afn.ca / vcarter@afn.ca

Counsel for Assembly of First Nations

AND
Gerrand Rath Johnson LLP
#700 – 1914 Hamilton Street
Regina, SK S4P 3N6

Scott Hopley
Tel: 306-522-3030
Fax: 306-522-3555
Email: shopley@grj.ca

Agent for Assembly of First Nations

**AND TO:
CLIMATE JUSTICE ET AL**
Kowalchuk Law Office
18 Patton Street

Larry Kowalchuk
Regina, SK S4R 3N9
Tel: 306-529-3001
Email: larry@kowalchuklaw.ca

Counsel for Climate Justice *et al*

**AND TO:
UNITED CONSERVATIVE
ASSOCIATION**

McLennan Ross LLP
600 McLennan Ross Building
12220 Stony Plain Road
Edmonton, AB T5N 3Y4

Ryan Martin / Steven A. A. Dollansky

Tel: 780-492-9135
Fax: 780-733-9707
Email: sdollansky@mross.com /
rmartin@mross.com

Counsel for the United Conservative
Association

**AND TO:
DAVID SUZUKI FOUNDATION**
Ecojustice Environmental Law Clinic at
the University of Ottawa
1 Stewart Street, Suite 216
Ottawa, ON K1N 6N5

Joshua Ginsberg / Randy Christensen

Tel: 613-562-5800 x 3399 / 604-685-5618
x 234
Fax: 613-562-5316 / 604-685-7813
Email: jginsberg@ecojustice.ca /
rchristensen@ecojustice.ca

Counsel for David Suzuki Foundation

**AND TO:
ECOFISCAL COMMISSION OF CANADA**
Faculty of Law
University of Ottawa
57 Louis Pasteur St.
Ottawa, ON K1N 6N5

Stewart Elgie / Nathalie J. Chalifour

Tel: 613-562-5800 x 1270 / x 3331
Email: Stewart.elgie@uottawa.ca /
Nathalie.Chalifour@uottawa.ca

Counsel for the Ecofiscal Commission of
Canada

**AND TO:
INTERNATIONAL EMISSIONS TRADING
ASSOCIATION**
DeMarco Allan LLP
333 Bay Street, Suite 625
Toronto, ON M5H 2R2

Lisa DeMarco / Jonathan McGillivray

Tel: 647-991-1190
Fax: 1-888-734-9459
Email: lisa@demarcoallan.com /
jonathan@demarcoallan.com

Counsel for International Emissions
Trading Association

AND TO:
AGRICULTURAL PRODUCERS
ASSOCIATION OF
SASKATCHEWAN INC.
Miller Thompson LLP
6th Floor, Bank of Montreal Building
2103 11th Avenue
Regina, SK S4P 3Z8

Khurram Awan
Tel: 306-347-8338
Email: kawan@millerthomson.com

Counsel for Agricultural Producers
Association of Saskatchewan Inc.

AND
Griffin Toews Maddigan
1530 Angus Street
Regina, SK S4T 1Z1

Daniel Maddigan
Tel: 306-525-6125
Fax: 306-525-5226
Email: gtmb2@sasktel.net

Agent for Agricultural Producers
Association of Saskatchewan Inc.

TABLE OF CONTENTS

	Page No.
TAB 1 – FACTUM OF THE CANADIAN PUBLIC HEALTH ASSOCIATION	1
PART I - INTRODUCTION	1
PART II - SUMMARY OF FACTS	1
A. CPHA and the public health approach	1
B. The serious borderless public health impacts of climate change	2
PART III - POINTS IN ISSUE AND ARGUMENT	4
A. The public health approach supports federal authority to coordinate an inter-jurisdictional response to climate change	4
B. The GGPPA is <i>intra vires</i> Canada under the national concern branch of P.O.G.G.	5
i. GHG emissions are a national threat to public health and a national concern	6
ii. Co-operative federalism favors concurrent distribution of jurisdiction over the national public health threat of GHG emissions	8
C. The GGPPA is a valid exercise of the criminal law power	11
i. Protecting public health is a valid criminal law purpose	12
ii. The GGPPA is similar to other criminal laws that protect public health	13
iii. Parliament may indirectly regulate an activity without prohibition, and aim to modify behaviour	14
iv. The GGPPA may validly effect provincial property and civil rights	15
PART IV - RELIEF	15
PART V - AUTHORITIES	16
TAB 2 - AFFIDAVIT OF IAN CULBERT AFFIRMED NOVEMBER 29, 2018	6
Exhibit “A” Letter from M. Leaver, Kelly Santini LLP, to D. Lynkowski dated August 15, 2013 attaching Certificate of Continuance	23
Exhibit “B” Canadian Public Health Association Working Paper,	32

Public Health: A conceptual framework, dated March 2017	
Exhibit “C” Selection of CPHA Activities Related to the Ecological Determinants of Health	47
Exhibit “D” Lancet Countdown 2018 Report: Briefing for Canadian Policymakers, dated November 2018 (released November 29, 2018)	53
Exhibit “E” The Chief Public Health Officer’s Report on the State of Public Health in Canada, dated 2008 (excerpts)	78
Exhibit “F” Global Change and Public Health: Addressing the Ecological Determinants of Public Health, dated May 2015	92
Exhibit “G” IPCC Factsheet: How does the IPCC select its authors? dated August 30, 2013	128
Exhibit “H” The 2018 Report of the Lancet Countdown on health and climate change: shaping the health of nations for centuries to come published on November 28, 2018	133
Exhibit “I” Letter from O. Adams, Canadian Medical Association, dated November 27, 2018	170

PART I - INTRODUCTION

1. Climate change, caused by greenhouse gas (“GHG”) emissions, is the gravest global public health threat of the 21st century. GHG emissions do not respect provincial or national borders, and neither do the detrimental public health effects they cause. The Canadian Public Health Association (“CPHA”) submits that a public health approach to this public health problem requires national and inter-jurisdictional action on GHG emissions. Parliament is constitutionally empowered to create a framework for that approach.

2. CPHA submits that the *Greenhouse Gas Pollution Pricing Act* (the “GGPPA”) is constitutional under the national concern branch of the “peace, order and good government” (“P.O.G.G.”) power. Their serious interprovincial and national public health impacts render GHG emissions a matter of national concern under P.O.G.G. A coordinated, consistent, and evidence-based national approach is necessary from a public health perspective and is available to Parliament. In the alternative, the GGPPA is constitutional pursuant to the criminal law power. Public health is a fundamental concern of the criminal law. Valid use of the criminal law power includes regulation of large-scale threats to public health, including GHG emissions.

3. CPHA submits that public health is a constitutional responsibility of government shared across different jurisdictions. Co-operative federalism favors concurrent distribution of jurisdiction, allowing the federal government to address the national public health threat posed by GHGs.

PART II - SUMMARY OF FACTS

A. CPHA and the public health approach

4. CPHA has supported evidence-based solutions to Canada’s public health challenges for over a century. Founded in 1910, CPHA is a national, non-partisan, non-governmental organization with links to the international community. Its primary purpose is to represent the interests of public health across Canada.¹

¹ Affidavit of Ian Culbert affirmed November 29 2018, Tab 2 [Culbert Affidavit] at paras 5–8.

5. Public health focuses on protecting and improving the collective health of the broader community. Public health is a discipline distinct from health care – while health care treats an individual's lung cancer, public health promotes abstention from tobacco to prevent cancer. Public health applies an evidence-based approach to promote health and equity across communities, services, programs and policies.² In Canada, the public health approach has revolutionized human well-being.³

6. Public health experts have long recognized the inextricable link between human health and the environment. Human health outcomes are inseparable from environmental conditions and policies.⁴

B. The serious borderless public health impacts of climate change

7. There is no dispute in this reference that climate change is caused by human GHG emissions and presents risks to Canada.⁵ These risks are unprecedented, both nationally and internationally.

8. Substantial and irrefutable scientific evidence demonstrates that serious and extensive public health impacts are caused, and will be caused, by climate change. The Reports of the Intergovernmental Panel on Climate Change ("IPCC")⁶, for example, are authored by hundreds of experts and cite thousands of studies.⁷ These reports are corroborated by Environment Canada's Report to the UN⁸ and CPHA's Lancet Countdown 2018 Report: Briefing for Canadian Policy Makers, an outlook on the public health dimensions of climate change with an emphasis on Canada-specific impacts. The health threats of climate change are recognized in the GGPPA's preamble.⁹

² *Report of the State of Public Health in Canada* (2008), Exhibit E to Culbert Affidavit, CPHA's Record, Tab 2E at 7.

³ For more details, see *Public Health: A Conceptual Framework*, Exhibit B to Culbert Affidavit, CPHA's Record, Tab 2B at 3-4.

⁴ *Report of the State of Public Health in Canada* (2008), *supra* note 2.

⁵ Factum of the Attorney General of Saskatchewan [**Saskatchewan Factum**] at para 1.

⁶ *2014 IPCC Fifth Assessment Synthesis Report*, Exhibit C to Affidavit of John Moffet sworn October 25 2018 [Moffet Affidavit], Canada's Record, Volume I, Tab 1C [**2014 IPCC Report**] and *2018 IPCC Special Report*, Exhibit D to Moffet Affidavit, Canada's Record, Volume I, Tab 1D [**2018 IPCC Report**].

⁷ *IPCC Factsheets*, Exhibit G to Culbert Affidavit, CPHA's Record, Tab 2G.

⁸ *Canada's 7th Communication National Communication on Climate Change*, Exhibit G to Moffet Affidavit, Canada's Record, Volume I, Tab 1G [**Canada UN Communication**].

⁹ *Greenhouse Gas Pollution Pricing Act*, SC 2018, c 12, s 186 [GGPPA], Preamble.

9. Globally, increases in atmospheric temperature are projected to increase morbidity and mortality from heat-related illnesses such as heat stroke, heat edema, heat rash, heat stress, acute cardiovascular disease and renal disease.¹⁰ Similarly, reduced air quality from GHGs will likely increase morbidity and mortality due to asthma, ischemic heart disease, stroke, and respiratory diseases.¹¹ Vector-borne diseases are increasing in prevalence and are likely to continue their advance as warming temperatures expand the geographic range of insect species.¹² Extreme weather events, including flooding, droughts, cyclones, hurricanes and wildfires are expected to increase in frequency and intensity.¹³ In addition to their immediate danger to human life, extreme weather also threatens food security by undermining crop yields,¹⁴ Indigenous hunting and gathering practices,¹⁵ and fisheries.¹⁶

10. The public health impacts of climate change are already being felt in Canada, where warming is happening at double the global rate.¹⁷ For example, an extreme heat-wave in 2018, attributable to climate change, caused over 90 deaths in Quebec.¹⁸ In 2017 and 2018, British Columbia experienced the most dangerous and expensive wildfire seasons in provincial history.¹⁹ Across Canada, climate change has caused a surge in tick-borne Lyme disease and mosquito-borne West Nile virus.²⁰ Most vulnerable is Canada's North, where warming is occurring at as much as triple the global rate. The rapid thawing of the permafrost underlying most infrastructure in the Arctic and ice road networks presents a variety of unique and profound risks to the health and safety of Northern people.²¹

11. The scientific consensus is that, without rapid mitigation of GHG emissions, the public health impacts will only intensify.²²

¹⁰ *Lancet Countdown Report*, Exhibit D to Culbert Affidavit, CPHA's Record, Tab 2D at 8.

¹¹ *Ibid* at 11.

¹² *IPCC 2018 Report*, *supra* note 6 at B5.2.

¹³ *IPCC 2014 Report*, *supra* note 6 at 8, 15.

¹⁴ *IPCC 2014 Report*, *supra* note 6 at 6.

¹⁵ *Canada UN Communication*, *supra* note 8 at 186.

¹⁶ *IPCC 2014 Report*, *supra* note 6 at 6.

¹⁷ *Canada UN Communication*, *supra* note 8 at 178.

¹⁸ *Lancet Countdown Report*, *supra* note 10 at 8.

¹⁹ Affidavit of Tim Lesiuk, British Columbia's Record [*Lesiuk Affidavit*] at para 8.

²⁰ *Canada UN Communication*, *supra* note 8 at 188.

²¹ *Canada UN Communication*, *supra* note 8 at 185–186.

²² *IPCC 2014 Report*, *supra* note 6 at 18; *IPCC 2018 Report*, *supra* note 6 at B5.2.

12. Saskatchewan has conceded that GHG emissions present a borderless problem.²³ GHGs emitted in one province exacerbate the greenhouse effect, which increases the risk of impacts across Canada, in other provinces and territories. The public health impacts caused by those GHG emissions are also borderless – vector-borne diseases, heatwaves, and wildfires are not restrained by political boundaries.

PART III - POINTS IN ISSUE AND ARGUMENT

13. The only issue is whether the GGPPA is *intra vires* of Canada.

A. The public health approach supports federal authority to coordinate an inter-jurisdictional response to climate change

14. Consistent, coordinated, evidence-based subnational, national and international action is required to address the public health risks of climate change. Public health evidence supports the Attorney General of Canada's conclusions that a failure of one province to act with respect to GHGs will undermine efforts to address climate change,²⁴ and a failure of one province to price carbon can undermine pricing efforts elsewhere.²⁵

15. The IPCC has concluded with a high degree of scientific certainty that mitigating the severity of climate change impacts will require a) rapid and far-reaching action to reduce GHG emissions across sectors;²⁶ and b) some form of "budgeting" of GHG emissions on national and international scales.²⁷ Without co-operative multi-level governance, the IPCC concluded that it will be difficult to overcome regional constraints and achieve emissions reductions targets.²⁸ Carbon pricing, in particular, has been hindered in various jurisdictions by inconsistent standards.²⁹

16. CPHA submits that public health is ultimately a constitutional responsibility of government. Stewardship, a core principle of public health, places a duty on

²³ Reply Factum of the Attorney General of Saskatchewan [**Saskatchewan Reply Factum**] at paras 20–21.

²⁴ Factum of the Attorney General of Canada [**Canada's Factum**], at paras 93–97.

²⁵ *Ibid.*, at paras 94–96.

²⁶ *IPCC 2018 Report*, *supra* note 6 at C2.

²⁷ *IPCC 2018 Report*, *supra* note 6 at B5.6.

²⁸ *IPCC 2014 Report*, *supra* note 6 at 26; *IPCC 2018 Report*, *supra* note 6 at D7.2.

²⁹ *IPCC 2014 Report*, *supra* note 6 at 30.

governments to act in ways that enhance the health of communities.³⁰ From a public health perspective, Parliament has a responsibility to protect Canada's public health from the national threat of GHG emissions. The Court of Appeal of The Hague recently found that the Netherlands' failure to take timely action to reduce GHGs contravened the right to life guaranteed by Article 2 of the European Commission on Human Rights.³¹ Canada is similarly responsible to protect the right to life, liberty and security of its people enshrined in section 7 of the *Charter of Rights and Freedoms* in the face of the borderless public health effects of climate change. Parliament must be constitutionally empowered to fulfill its responsibility.³²

17. As with other national public health issues such as communicable disease prevention or tobacco control initiatives, the federal government has a necessary role to coordinate Canada's approach to climate change to protect Canada's public health.³³ As discussed below, this role may be validly carried out either through the P.O.G.G. power or the criminal law power.

B. The GGPPA is *intra vires* Canada under the national concern branch of P.O.G.G.

18. CPHA adopts the Attorney General of Canada's description of the relevant factors to be considered when determining whether a matter constitutes a national concern.³⁴ CPHA agrees with Canada that the pith and substance of the GGPPA is to incentivize the behavioural changes necessary to reduce Canada's GHG emissions by ensuring that GHG emissions pricing applies throughout Canada.³⁵

³⁰ Culbert Affidavit, *supra* note 1, at para 19.

³¹ Court of Appeal, The Hague, October 9, 2018, *Urgenda Foundation v The State of the Netherlands*, Case Number: 200.178.245/01 (The Netherlands) (Attorney General of Canada Book of Authorities (**Canada's Authorities**), Vol 2, Tab 40), at paras. 73, 76. The Court of Appeal of the Hague found the Netherlands had contravened its duty of care by not wanting to reduce its emissions by at least 25% by the end of 2020.

³² See *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010 (SCC) at para 176 (CPHA's Authorities, Tab 2): Per Lamer C.J., the government, is vested with constitutional responsibility for the welfare of Canada's aboriginal peoples and must have the power to legislate in relation to aboriginal rights to land. Similarly, as Canada has the responsibility to safeguard Canada's public health from GHG emissions, it must have the power to legislate in relation to GHGs.

³³ Culbert Affidavit, *supra* note 1 at paras 33–34

³⁴ Canada's Factum at para 83.

³⁵ GGPPA Preamble, *supra* note 9.

19. CPHA's submissions uniquely focus on the constitutional implications of the public health impacts at issue. As discussed below, the nature of these impacts matters constitutionally.

i. GHG emissions are a national threat to public health and a national concern

20. When assessing whether GHG emissions are of national concern, it is critical to assess their public health impacts. In particular, it is the nature and scope of those impacts that engage Canada's jurisdiction under P.O.G.G. As Estey J. held in *Schneider v the Queen*, health is:

an amorphous topic which can be addressed by valid federal or provincial legislation, depending on the circumstances of each case and on **the nature and scope of the health problem** in question.³⁶
[Emphasis added.]

Estey J. further held that federal legislation in relation to health "can be supported where the dimension of the problem is national rather than local in nature."³⁷

21. That is the case here. GHG emissions constitute a matter of national concern for the purposes of P.O.G.G. because their public health impacts are, (1) borderless in nature and (2) national in scope. As a result, GHG emissions have attained

such dimensions as to affect the body politic of the Dominion, and to justify the Canadian Parliament in passing laws for their regulation or abolition, in the interest of the Dominion.³⁸

22. This Court may find a matter to be of national concern where, as here, there exists:

- (a) a distinctive, recognizable subject matter that;
- (b) has the potential to cause adverse public health impact(s) on an interprovincial or national scale; and
- (c) where failure of one province to act will impair effective mitigation of the public health impact(s).

23. P.O.G.G. has been identified as supporting federal public health legislation since the earliest jurisprudence. In *Russell v. the Queen*, the Privy Council drew an

³⁶ *Schneider v The Queen*, 1982 CarswellBC 241 (SCC), at para 75 [*Schneider*] (CPHA's Authorities, Tab 9).

³⁷ *Ibid* at para 75.

³⁸ *Ontario (Attorney General) v. Canada (Attorney General)*, [1896] UKPC 20 (Privy Council) at 9. (Saskatchewan's Factum, Part VII, Authorities [*Saskatchewan's Authorities*], Tab 8)

analogy with the criminal law and upheld temperance legislation under the P.O.G.G. power because it protected national public health and safety.³⁹

24. In *Standard Sausage Co. v Lee*, the British Columbia Court of Appeal found federal food safety laws were *intra vires* of Canada pursuant to the P.O.G.G. power.⁴⁰ In so holding, the Court found that food safety was a matter of national public health requiring national action:

it is difficult to apprehend how [Canada] can discharge its paramount duty "to make Laws for the Peace, Order and Good Government of Canada" throughout the whole realm and not merely in parts of it, without "making laws" to secure and protect the public health in its food supply.⁴¹

25. In *Crown Zellerbach*, the *Ocean Dumping Control Act* at issue was concerned with the effect of pollution, not only on the environment, but also on human health.⁴² This was evident in the parts of the Act cited by the Court, including a prohibition on granting dumping permits if the dumped substance would not be rendered harmless and would endanger human health (s. 9 (5)(a)) and the ability of the Minister to include terms in a permit in the interest of human life (s.10(2)).⁴³

26. The matter at issue in *Crown Zellerbach* is similar to what is at issue here – the regulation of specific, human activities with borderless, negative public health impacts. There the activity was dumping harmful materials into the ocean. Here it is emitting harmful GHGs into the atmosphere. In both cases "it is because of the inter-relatedness of the intra-provincial and extra-provincial aspects of the matter that it requires a single or uniform legislative treatment."⁴⁴ And there, as here, the matter

³⁹ *Russell v. the Queen*, [1882] UKPC 33 [Saskatchewan's Authorities, Tab 32].

⁴⁰ *Standard Sausage Co v Lee*, 1933 CarswellBC 83 (BCCA) [*Standard Sausage*], at paras 11, 41–46. (CPHA's Authorities, Tab 10)

⁴¹ *Standard Sausage Co v Lee*, *ibid*, at para 11. The Supreme Court, in *Labatt Breweries*, later acknowledged Parliament's "health jurisdiction" under POGG: *Labatt Breweries v Canada (Attorney General)*, 1979 CarswellNat 7 (SCC) at para 17. (CPHA's Authorities, Tab 3)

⁴² *R. v. Crown Zellerbach Canada Ltd.*, [1988] 1 SCR 477 (SCC), at 408 [*Crown Zellerbach*] (Canada's Authorities, Vol 1, Tab 24)

⁴³ *Crown Zellerbach*, *ibid* at para 408–411.

⁴⁴ *Crown Zellerbach*, *ibid* at para 434.

was distinctive enough to be the subject of an international agreement; a fact relied on by the majority in *Crown Zellerbach*.⁴⁵

27. Again, in *Ontario Hydro v. Ontario (Labour Relations Board)*, the national public health implications of nuclear power supported a finding that the legislation was constitutional under P.O.G.G.⁴⁶ Lamer C.J., echoing the majority in his concurring decision, found that the “extent of the federal government's interest in nuclear power production is its interests in health, safety and security.”⁴⁷

28. Similarly, in *Canadian Blood Services v. Manitoba (Human Rights Commission)*, the Manitoba Court of Queen's Bench upheld federal jurisdiction over the safety of the blood supply and blood products under the national concern branch of P.O.G.G.⁴⁸ The Court relied on Professor Hogg's position that

the peace, order and good government power extends to public health matters that have attained national dimensions, either under the national concern branch of the power, or under the emergency branch of the power.⁴⁹

29. Climate change caused by GHG emissions presents a grave national and international public health threat. Parliament is empowered under P.O.G.G. to meet this borderless threat and overcome provincial inability through the GGPPA. This ability to act nationally in furtherance of public health is one of the purposes and values of a federal system.

ii. Co-operative federalism favors concurrent distribution of jurisdiction over the national public health threat of GHG emissions

30. Jurisdiction over public health, like the environment, is shared between the federal and provincial governments. As argued above, CPHA submits that all levels of government share a responsibility to protect and advance public health. Contrary

⁴⁵ *Crown Zellerbach*, *ibid* at 436. There, the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, here the Paris Agreement. These are both UN conventions.

⁴⁶ *Ontario Hydro v Ontario (Labour Relations Board)*, 1993 CarswellOnt 1012 (SCC) [*Ontario Hydro*], at para 85 (CPHA's Authorities, Tab 5).

⁴⁷ *Ontario Hydro*, *ibid*, at 31.

⁴⁸ *Canadian Blood Services v Manitoba (Human Rights Commission)* 2011 MBQB 312 at paras 18, 46 and 47 (CPHA's Authorities, Tab 1).

⁴⁹ *Ibid* at para 34.

to Saskatchewan's submissions, existing provincial carbon pricing schemes and the federal GGPPA can co-exist under the national concern branch of P.O.G.G.

31. Saskatchewan cites *Crown Zellerbach* to argue that the P.O.G.G. power confers exclusive jurisdiction.⁵⁰ *Crown Zellerbach* does not support Saskatchewan's position. While Le Dain J. quoted Beetz J. with respect plenary jurisdiction, Le Dain J. confirmed that the provincial inability test:

must **not**, however, go so far as to provide a rationale for the general notion, hitherto rejected in the cases, that there must be a plenary jurisdiction one order of government or the other to deal with any legislative problem.⁵¹ [emphasis added]

32. Saskatchewan's contention that a matter of national concern displaces provincial power is at odds with the double aspect doctrine and co-operative federalism. The Supreme Court has long departed from the "watertight" compartments analysis of the Privy Council, recognizing that not all activities in society must fall exclusively under a federal or provincial head of power. As Binnie and LeBel JJ. held in *Canadian Western Bank*, the double aspect doctrine:

recognizes that both Parliament and the provincial legislatures can adopt valid legislation on a single subject depending on the perspective from which the legislation is considered, that is, depending on the various "aspects" of the "matter" in question.⁵²

33. Double aspect is especially applicable to public health. While provinces have jurisdiction over front-line healthcare, Parliament can legislate to address national public health concerns.⁵³ Provinces' power to legislate in the area of health does not exclude Parliament's authority to target public health evils.⁵⁴

34. Where there is overlap, both federal and provincial provisions stand unless they are in conflict – that is, where dual compliance is impossible. Courts narrowly construe conflicts to allow provincial laws to coexist with federal laws so long as they

⁵⁰ Saskatchewan Reply Factum at paras 40 and 41.

⁵¹ *Crown Zellerbach*, *supra* note 42, at 432–434.

⁵² *Canadian Western Bank*, [2007] 2 SCR 3 at para 30 (Canada's Authorities, Vol 1, Tab 11).

⁵³ *Schneider*, *supra* note 36 at para 75. According to *Canadian Blood Services*, *supra* note 48 at para 46, provinces have jurisdiction under 92(7), 92(13) and the residual clause while Parliament has jurisdiction under 91(27) and P.O.G.G.

⁵⁴ *Québec (Procureur général) c. Canada Procureur général*, 2010 SCC 61 at para 57 [*Reference re Assisted Human Reproduction Act*] (Saskatchewan's Authorities, Tab 21).

do not expressly contradict federal law.⁵⁵ As Dickson J. found in *Multiple Access v. McCutcheon*:

In principle, there would seem to be no good reason to speak of paramountcy and preclusion except where there is actual conflict in operation, as where one enactment says "yes" and the other says "no"; "the same citizens are being told to do inconsistent things"; compliance with one is defiance of the other.⁵⁶

35. There is no conflict between the GGPPA and provincial climate change laws like Saskatchewan's Prairie Resilience Plan. Saskatchewan's performance-based standards do not conflict with the GGPPA's pricing system.⁵⁷ Furthermore, to the extent Saskatchewan overlays additional subsidies to support low carbon innovations, there is also no conflict. The minimum floor is GGPPA's carbon pricing scheme, and it is open to the provinces to do more to combat the serious public health threat of climate change. Dual compliance is not only possible here; in the CPHA's view, it is also necessary from a public health perspective to combat this public health threat.⁵⁸

36. Parliament does not undermine its own jurisdiction by legislating a degree of discretion to provinces. In the recent *Reference re: Pan-Canadian Securities Regulation*,⁵⁹ the Supreme Court defined "co-operative federalism" as an "interpretive aid" favoring "a harmonious reading of statutes enacted by the federal and provincial governments which allows for them to operate concurrently."⁶⁰ The Court unanimously upheld a federal regulatory scheme despite it deferring to existing provincial regulations. Just as the national securities legislation was validly enacted to address any risk that "slips through the cracks" and posed a threat to the Canadian economy as a whole,⁶¹ the GGPPA operates to address the interprovincial threats of climate change where a province chooses not enact its own carbon pricing system.

⁵⁵ *Multiple Access Ltd. v. McCutcheon*, [1982] 2 S.C.R. 161 [*Multiple Access*] (CPHA's Authorities, Tab 4).

⁵⁶ *Multiple Access*, *ibid.*, at para 48 (CPHA's Authorities, Tab 4).

⁵⁷ Saskatchewan Prairie Resilience Plan, Saskatchewan's Record at Tab 10.

⁵⁸ Affidavit of John Moffet, affirmed Oct 25 2018, Canada's Record, Vol I, Tab 1, at para 46.

⁵⁹ *Reference re Pan-Canadian Securities Regulation*, 2018 SCC 48 [*2018 Securities Reference*]. (CPHA's Authorities, Tab 6).

⁶⁰ *2018 Securities Reference*, *ibid.*, at para 17, citing *R. v. Comeau*, 2018 SCC 15, at para. 78.

⁶¹ *2018 Securities Reference*, *ibid.*, at para 92.

37. Similarly, the Manitoba Court of Queen's Bench in *R. v. Canada Metal Co* upheld a federal air pollution law, even though it made "provision for co-operation and consultation with the provinces in respect of the establishment of emission standards and ...for federal-provincial agreements relating to air quality".⁶² The *Canadian Environmental Protection Act, 1999* ("CEPA"), continues this tradition of co-operative federalism with a federal backstop that allows the federal government to address international air and marine pollution where provincial governments cannot prevent, control or correct that pollution or choose not to do so.⁶³

38. The Attorney General of Saskatchewan further argues the GGPPA is unconstitutional because it does not apply uniformly across the country and arbitrarily applies to Saskatchewan.⁶⁴ On the contrary, the GGPPA applies across Canada and its operation in Saskatchewan is not arbitrary. The Act requires that every province have a carbon pricing scheme that meets the federal standards. The GGPPA only operates to impose the specifics of the fuel charge and output-based pricing system where provincial efforts fall below that standard. The Act's operation is not arbitrary, but based on the objective criteria of whether a province has a carbon pricing system that is consistent with the federal GHG emissions reduction target.

39. In any event, Saskatchewan cites no authority in support of its proposition that a law is unconstitutional where it has differential application.⁶⁵ Indeed, Saskatchewan refers to two cases, *R. v. Sheldson S.*⁶⁶ and *Haig v. Canada*,⁶⁷ which hold that differential application of federal law can legitimately forward the values of a federal system.

C. The GGPPA is a valid exercise of the criminal law power

40. In the alternative, the GGPPA is a valid exercise of the federal government's criminal law power pursuant to s. 91(27) of the *Constitution Act, 1867*. As noted

⁶² *Canada Metal Co v R*, 1982 CarswellMan 140 (Man Ct QB) at para 10 (Canada's Authorities, Vol 1, Tab 8).

⁶³ CEPA, at ss. 166 and 176.

⁶⁴ Saskatchewan Factum, at para. 39.

⁶⁵ Saskatchewan Factum, at para. 39.

⁶⁶ [1990] 2 SCR 254 (Saskatchewan's Authorities, Tab 35).

⁶⁷ [1993] 2 SCR 995 (Saskatchewan's Authorities, Tab 12).

above, the pith and substance of the GGPPA is to reduce GHG emissions by requiring GHG emissions pricing to apply throughout Canada. In provinces without a compliant GHG emissions pricing scheme, the Act operates to impose charges on GHG sources and penalizes them if they do not pay the mandatory charge.

41. Criminal laws, for constitutional purposes, have three elements: (1) a prohibition, (2) a penalty, and (3) a typically criminal purpose. This is not a restrictive definition, and the Supreme Court has upheld a variety of regulatory laws that have been enacted by Parliament under its criminal law power.

i. Protecting public health is a valid criminal law purpose

42. Public health is a fundamental concern of the criminal law.⁶⁸ Parliament has a long history of validly regulating diverse public health matters through the criminal law power.⁶⁹ In *RJR MacDonald*, the Supreme Court held that

The scope of the federal power to create criminal legislation with respect to health matters is broad, and is circumscribed only by the requirements that the legislation must contain a prohibition accompanied by a penal sanction and must be directed at a legitimate public health evil. If a given piece of federal legislation contains these features, and if that legislation is not otherwise a "colourable" intrusion upon provincial jurisdiction, then it is valid as criminal law".⁷⁰

43. The GGPA is not a "colourable" intrusion here given its public health and environmental purpose.

44. In *Hydro-Quebec*, the Supreme Court upheld a complex regulatory scheme to control the emission of PCBs in the 1998 version of the *Canadian Environmental Protection Act*⁷¹ under the criminal law power for, among other reasons, its promotion of health. La Forest J. found that environmental protection is "is closely

⁶⁸ The Supreme Court has held, with respect to criminal law, that "Public peace, order, security, health, morality: these are the ordinary though not exclusive ends served by that law": *Reference re Validity of Section 5 (a) Dairy Industry Act*, [1949] SCR 1, at para 145 (CPHA's Authorities, Tab 7).

⁶⁹ See, e.g. *R v Wetmore*, 1983 CarswellBC 693 (SCC), which considered the *Food and Drugs Act* as a law with a health protection purpose upheld by the criminal law.

⁷⁰ *RJR-MacDonald Inc. v. Canada*, [1995] 3 SCR 199 at para 32 (CPHA's Authorities, Tab 8).

⁷¹ S.C. 1999, c. 33. [CEPA]

integrated, directly or indirectly, with the protection of health".⁷² Regulation of GHGs is critical for the same health reasons as PCBs.

45. As the Federal Court of Appeal unanimously held in *Synchrude Canada Ltd. v. Attorney General of Canada*, "it is uncontroverted that GHGs are harmful to both health and the environment and as such, constitute an evil that justifies the exercise of the criminal law power".⁷³

ii. The GGPPA is similar to other criminal laws that protect public health

46. A comparison of the provisions of CEPA and GGPPA demonstrates the significant similarities between the two laws, and indicates that the GGPPA is also a valid criminal law. As set out below, both laws have similar federal backstops, offences, penalties, enforcement and sentencing provisions, among other parallels:

- (a) **Federal backstops:** Furthering co-operative federalism, both the GGPPA and CEPA have federal backstops for international air and water pollution, respectively, under which the Minister shall only recommend regulations if the governments responsible for pollution sources cannot "prevent, control or correct the air pollution under its laws or does not do so".⁷⁴
- (b) **Inspections:** The procedure for inspections is similar under both the GGPPA and CEPA.⁷⁵
- (c) **Offences:** Like CEPA, the GGPPA sets out a series of offences, including those regarding false or deceptive statements.⁷⁶
- (d) **Penalties:** The GGPPA and CEPA have penalties for false/misleading declarations.⁷⁷
- (e) **Enforcement:** Both the GGPPA and CEPA designate enforcement officers and empower them to make orders⁷⁸ and charge for failure to comply.⁷⁹
- (f) **Sentencing:** Both the GGPPA and CEPA emphasize deterrence, denunciation and the 'polluter pays' principle, while also referring to *Criminal Code* sentencing principles and aggravating factors. Both Acts also allow courts to make additional orders where there is non-compliance.⁸⁰

⁷² *Canada (Procureure Générale) v. Hydro Québec*, [1997] 3 S.C.R. 213 [*Hydro-Quebec*], at para 132 (Canada's Authorities, Vol 1, Tab 25).

⁷³ *Synchrude Canada Ltd. v. Attorney General of Canada*, 2016 FCA 160 [*Synchrude*], at para 62 (Canada's Authorities, Vol 2, Tab 37).

⁷⁴ CEPA, *supra* note 71, s 166, 176(4).

⁷⁵ GGPPA, *supra* note 9, ss. 141 and 203(1); CEPA, 218(1).

⁷⁶ GGPPA, ss. 37(1), 131, 133, 232(1); CEPA, ss. 272, 272.1.

⁷⁷ GGPPA, ss. 37(1), 131, 133; CEPA, ss. 272(2), 272.1.

⁷⁸ GGPPA, ss. 201(3), s. 215; CEPA, s. 169, s. 217(3).

⁷⁹ GGPPA, ss. 218 and 219; CEPA, ss. 95, 98.

⁸⁰ GGPPA, s. 232(3), s. 247, s. 248, s. 249; CEPA, s. 272(3), s. 287, s. 287.1, s. 291.

- iii. *Parliament may indirectly regulate an activity without prohibition, and aim to modify behaviour*

47. Criminal laws may indirectly regulate an activity with a view to behaviour modification, as is the case in the GGPPA. In *RJR-MacDonald*, the Supreme Court considered whether the *Tobacco Products Control Act*⁸¹ was valid under the criminal law power, though it did not prohibit tobacco use to achieve its public health purpose. Instead, the Act regulated the advertising and labeling of tobacco products in Canada. Nevertheless, the Supreme Court held that a valid criminal law purpose may exist, no matter how “circuitous” a path Parliament takes to reach its goal.⁸²

48. In *Syncrude Canada Ltd. v. Canada*,⁸³ the Federal Court of Appeal considered the constitutionality of s. 5(2) of the *Renewable Fuels Regulations*⁸⁴ pursuant to s. 140(2) CEPA. Similar to parts of the GGPPA, the regulation combatted GHGs indirectly, by requiring diesel fuel produced, imported or sold in Canada to contain at least 2% renewable fuel. Syncrude argued that the use of the regulation to create demand for renewable fuels was not a criminal law, as it addressed GHGs indirectly. The Court unanimously rejected that argument, holding that “Parliament may use indirect means to achieve its ends. A direct and total prohibition is not required”.⁸⁵

49. The Court in *Syncrude* also rejected the argument that the Regulation was simply an economic measure, and not a valid criminal law, holding that:

The criminal law power is not negated simply because Parliament hoped that the underlying sanction would encourage the consumption of renewable fuel and spur a demand for fuels that did not produce GHGs. All criminal law seeks to deter or modify behaviour, and it remains a valid use of the power if Parliament foresees behavioural responses, either in persons or in the economy.⁸⁶

⁸¹ S.C. 1988, c. 20.

⁸² *RJR-MacDonald Inc. v. Canada (Attorney General)*, *supra* note 70. The modern *Tobacco and Vaping Products Act* continues to regulate many minute aspects of the sale of tobacco products including the size of health warning labels, in a manner that is prescriptive rather than obviously prohibitive; *Tobacco and Vaping Products Control Act*, SC 1997 c 13, s 15; *Tobacco Products Labelling Regulation*, SOR 2011/1, s 14(3).

⁸³ *Supra* note 73.

⁸⁴ SOR/2010-189.

⁸⁵ *Syncrude*, *supra* note 73 at para 83, quoting the *Reference re Firearms Act (Can.)*, 2000 SCC 31 at para. 15, [2000] 1 S.C.R. 783 [*Firearms Reference*], at paras. 39 and 40.

⁸⁶ *Syncrude*, *supra* note 73, at para 69.

50. In the same way, the GGPPA aims to reduce GHG emissions by prohibiting or regulating prescribed individuals from engaging in certain activities, unless they comply with the requirements of the fuel charge or output-based pricing system. The prohibition is accompanied by penalties, which are enforced in a similar manner as other statutes that have been upheld under the criminal law power. As in *Syncrude*, the criminal law power should be applied flexibly in this case to deal with a pernicious public health problem.

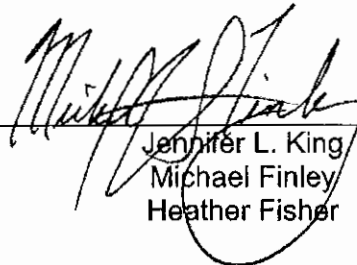
iv. The GGPPA may validly effect provincial property and civil rights

51. Finally, it is well established criminal law legislation protecting public health may have incidental effects on property and civil rights in a province.⁸⁷ The criminal law power to regulate GHG emissions does not constitute an invasion of provincial regulatory power. Use of the criminal law power to protect, among other things, the health of citizens, is subject to a broad area of concurrency.⁸⁸ Similarly, the GGPPA has valid incidental effects on property and civil rights. Both the GGPPA and the provinces' climate change plans may coexist. As explained above, there is no direct conflict between the GGPPA and provincial climate change laws.

PART IV - RELIEF

52. CPHA requests that this Honourable Court make the recommendation that the GGPPA is *intra vires* the federal government's power. CPHA requests that no costs be awarded either for or against CPHA in respect of its intervention.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 25th day of January, 2019.



Jennifer L. King
Michael Finley
Heather Fisher

⁸⁷ *Standard Sausage*, *supra* note 40 at para 66, cited with approval in *Hydro Quebec*, *supra* note 72 at para 129 and *RJR Macdonald*, *supra* note 70.

⁸⁸ *Syncrude*, *supra* note 73, at para 153.

PART V - AUTHORITIES

LIST OF AUTHORITIES

TAB	AUTHORITY
1.	<i>Canadian Blood Services v Manitoba (Human Rights Commission)</i> , 2011 MBQB 312
2.	<i>Canada (Procureure Générale) v Hydro Québec</i> , [1997] 3 SCR 213 (SCC)
3.	<i>Canadian Western Bank v Alberta</i> , 2007 SCC 22
4.	<i>Delgamuukw v British Columbia</i> , [1997] 3 SCR 1010 (SCC)
5.	<i>Labatt Breweries v Canada (Attorney General)</i> , 1979 CarswellNat 7 (SCC)
6.	<i>Multiple Access Ltd. v McCutcheon</i> , [1982] 2 SCR 161 (SCC)
7.	<i>Ontario (Attorney General) v Canada (Attorney General)</i> , 1896 CarswellNat 45 (PC)
8.	<i>Ontario Hydro v Ontario (Labour Relations Board)</i> , 1993 CarswellOnt 1012 (SCC)
9.	<i>Québec (Procureur général) v Canada Procureur général</i> , 2010 SCC 61 (SCC)
10.	<i>R. v Canada Metal Co.</i> , 1982 CarswellMan 140 (Man Ct QB)
11.	<i>R. v Crown Zellerbach Canada Ltd.</i> , 1988 CarswellBC 137 (SCC)
12.	<i>Reference re Pan-Canadian Securities Regulation</i> , 2018 SCC 48
13.	<i>Reference re Validity of s. 5(a) of Dairy Industry Act (Canada)</i> , (1949) SCR 1 (SCC)
14.	<i>RJR-MacDonald Inc. v Canada (Attorney General)</i> , (1995) 3 SCR 199
15.	<i>Russell v The Queen</i> (1882), (1882) UKPC 33
16.	<i>Schneider v The Queen</i> , (1982) 2 SCR 112 (SCC)
17.	<i>Standard Sausage Co. v Lee</i> , 1933 CarswellBC 83 (BC CA)
18.	<i>Syncrude Canada Ltd. v. Canada (Attorney General)</i> , 2016 FCA 160
19.	<i>Urgenda Foundation v The State of the Netherlands</i> , Case Number: 200.178.245/01 (The Netherlands)

IN THE COURT OF APPEAL FOR SASKATCHEWAN

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

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

BETWEEN:

ATTORNEY GENERAL OF SASKATCHEWAN

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

– and –

ATTORNEY GENERAL OF CANADA

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

– and –

ATTORNEY GENERAL OF ONTARIO

Intervener Pursuant to Section 6 of
The Constitutional Questions Act, 2012

AFFIDAVIT OF IAN CULBERT

Affirmed November 29, 2018

(Canadian Public Health Association, Applicant for Intervener Status)

I, Ian Culbert, of the City of Ottawa, in the Province of Ontario, AFFIRM AND
SAY:

1. I am the Executive Director of the Canadian Public Health Association ("CPHA"),
an applicant for intervener status. Accordingly, I have knowledge of the matters to which
I depose in this affidavit. Where my knowledge is based on information and belief from a

source other than my direct personal knowledge, I have indicated the source of my information or belief and I believe such information to be true.

2. I have worked at CPHA since 1990. I have assumed various roles including Secretary of the Community Health Secretariat and HIV Prevention Program Officer and Coordinator. In 2002, I became a Director of the Association managing the day-to-day operational and programmatic functions. I was promoted to Director of Communications and Business Development in 2008 and was appointed Executive Director in 2013.

3. CPHA seeks leave to intervene before the Court of Appeal of Saskatchewan in the matter of *Attorney General of Saskatchewan v Attorney General of Canada* (Court File No. CACV3239). As required by paragraph 7 of Chief Justice Richards' Order respecting interventions dated June 4, 2018 (the "Intervention Order"), I have reviewed the first factum filed by the Attorney General for Saskatchewan and the factum filed by the Attorney General of Canada.

4. In this affidavit, I describe CPHA and address the following matters required by paragraph 8 of the Intervention Order:

- (a) The basis of CPHA's interest in the issues raised by this Reference;
- (b) An explanation of what CPHA's participation will add to the proceedings; and
- (c) The position CPHA intends to take on the question posed to this Honourable Court and the nature of the arguments CPHA intends to advance.

I. BACKGROUND – CPHA AND PUBLIC HEALTH

(a) About CPHA

5. Founded in 1910 through an Act of Parliament and registered as a charitable organization since 1975, CPHA is a national, independent, non-partisan, non-governmental organization ("NGO") representing the interests of public health in Canada, with links to the international public health community. As the only national NGO in

Canada focussed exclusively on public health, CPHA is uniquely positioned to advise decision-makers about healthy public policy and to guide initiatives to help safeguard the personal and community health of Canadians. A copy of the Certificate of Continuance of CPHA under the *Canada Not-for Profit Corporations Act* is attached as **Exhibit "A"**.

6. CPHA's primary purpose is to enhance the health and health equity of populations in Canada by facilitating development and exchange of public health knowledge and by advocating for evidence-informed, healthy public policies. In this regard, it encourages and contributes to the development of sound, evidence-based public policy, legislation, regulations, strategies, programs and practices that protect and promote health and prevent illness and injury at a population level (as opposed to at the individual patient level).

7. Membership in CPHA is voluntary and CPHA's members are primarily front-line professionals, academics and researchers representing over 25 different health-related disciplines across the country. Though its members are vital to supporting the activities of CPHA, CPHA is not a professional association and is not primarily focussed on the provision of health or medical services at an individual level. CPHA is a unique organization that brings the public health conceptual framework to bear on issues of vital importance to the health and well-being of Canadians at a population level. *Public Health: A Conceptual Framework* ("CPHA Conceptual Framework") describes CPHA's public health approach and is attached as **Exhibit "B"**.

8. CPHA provides a forum, drawing on the expertise of its members, to share knowledge that informs program development and implementation, and policy-making processes. When public health evidence supports particular policy measures, CPHA may engage in an advocacy role by disseminating important findings directly to decision-makers in government, practitioners in the workforce, and the Canadian public. When CPHA performs this function, it does so in an assiduously non-partisan manner, unencumbered by constraints that many public health professionals face as employees of government or government-funded organizations or agencies.

9. Select examples of CPHA's initiatives to advance public health education, research, policy and practice in Canada and around the world in the past century include:

- (a) *Publishing the Canadian Journal of Public Health ("CJPH")*: CPHA has published this independent, peer-reviewed journal, since 1910. The Journal is dedicated to fostering excellence in public health research, scholarship, policy and practice. The aim of the Journal is to advance public health research and practice in Canada and around the world.
- (b) *Advocating for the creation of a federal department of health (now Health Canada)*: CPHA played a key role in advocating for the creation of a federal department of health in 1919.
- (c) *The National Seminar on Smoking and Health*: CPHA co-sponsored this conference with the Department of National Health and Welfare in 1972. The conference initiated stronger, sustained leadership in tobacco education initiatives.
- (d) *Alma Ata Conference*: CPHA presented the position of the NGO community at the World Health Organization ("WHO") / United Nations International Children's Emergency Fund ("UNICEF") International Conference on Primary Health Care in Alma Ata, Kazakhstan in 1978 (the "Alma Ata Conference"). The Alma Ata Declaration adopted at the Alma Ata Conference emerged as a major milestone of the 20th century in the field of public health.
- (e) *First International Conference on Health Promotion*: In November 1986, CPHA, Health and Welfare Canada and WHO organized the first International Conference on Health Promotion held in Ottawa, leading to the publication of *The Ottawa Charter for Health Promotion*, a seminal document in the practice of public health around the world.
- (f) *Implementation of the Canadian International Development Agency's ("CIDA") International Immunization Program*: CIDA chose CPHA to

implement its international immunization program against all vaccine-preventable diseases in developing Commonwealth and Francophone nations, which CIDA launched in partnership with WHO, UNICEF and a consortium of Canadian NGOs in 1986.

- (g) *Publishing position statements, discussion documents and other resources:* CPHA regularly publishes timely, evidence-informed public health guidance and perspectives to public health professionals and policy makers.¹

10. CPHA has advocated for environment-specific health policies since the 1930s when it examined standards for water, sewage and dairy products. I prepared a selected list of CPHA activities related to ecological determinants of health, attached as **Exhibit “C”**.

11. Since the early 1990s, CPHA has recognized the threat of excessive greenhouse gas (“GHG”) emissions to public health and the need to address climate change through policy action. Some of CPHA’s initiatives related to public health and climate change include:

- (a) 1991 Task Force Report – *Human & Ecosystem Health: Canadian Perspectives, Canadian Action*: This was a major working document researched and written by an expert task force commissioned by CPHA that details the expected future human health impacts of climate change;
- (b) 1999 Survey – *Supporting Public Awareness Initiatives on the Health Effects of Climate Change & Air Pollution: Survey Report*: CPHA commissioned a survey of public awareness of the health effects of climate change in four sectors (health, education, advocacy and the private sector), with support contributed by the Federal government. The majority of

¹ Policy and position statements published by CPHA since 2011 include: *The Winnable Battle: Ending Tobacco Use in Canada* (2011), *Managing Illegal Psychoactive Substances in Canada* (2014), *Statement of Support for a National Inquiry Concerning Missing and Murdered Aboriginal Women* (2014), *Discussion Paper on the Ecological Determinants of Health* (2015), *Medical Assistance in Dying* (2016), *The Opioid Crisis in Canada* (2016), *A Public Health Approach to the Legalization, Regulation and Restriction of Access to Cannabis* (2017), and *A Public Health Approach to Nicotine-Containing Vaping Devices* (2018).

organizations surveyed regarded the health effects of climate change and air pollution as major areas of concern;

- (c) 2000 Roundtable – *Roundtable on Health and Climate Change*: In partnership with Health Canada, Environment Canada and Natural Resources Canada, CPHA organized and co-chaired a roundtable attracting the participation of over forty organizations. Participants agreed on the need for strong public outreach and engagement on climate change and air pollution;
- (d) 2001 Plan – *Strategic Plan on Health and Climate Change: A Framework for Collaborative Action*: Building on the findings of the Roundtable on Health and Climate Change, CPHA published a plan emphasizing the need for policy development, research and knowledge, public outreach and engagement, adaptation and response capability and promotion of personal action;
- (e) 2002 Workshop – *Clean Air Day*: CPHA developed and disseminated resource materials and public awareness activities for Clean Air Day and beyond. CPHA also designed and implemented a pilot workshop for health professionals;
- (f) 2006 Interviews – *Snapshot of Adaptation and Response Capacity in Public Health*: CPHA questioned key public health community members in Canada on the degree to which they considered climate change risks in policies and planning;
- (g) 2007 Policy Assessment – *Climate Change and Health Vulnerability Assessment*: CPHA reviewed the draft technical and synthesis report of the Government of Canada's Climate Change and Health Vulnerability Assessment 2007 and selected key issues on which to report to public health professionals in Canada;

- (h) 2015 Paper– *Discussion Paper on the Ecological Determinants of Health*: This CPHA expert publication discussed climate change as a key determinant of human health;
- (i) 2016 Article – *Public Health supports the Government of Canada’s push to accelerate phase-out of coal power*: CPHA published online an article explaining how the Government of Canada’s efforts to eliminate coal plant emissions would improve human health and help to stabilize the climate;
- (j) 2017 Article – *Climate Change and Vector-borne Illness*: A contributing public health scientist described how climate change may be increasing the range of ticks and mosquitos which are vectors for Lyme Disease and West Nile virus, both of which pose increasing threats to Canadian public health;
- (k) 2017 Report – *Lancet Countdown Report: Briefing for Canadian Policymakers*: A brief summarizing Canadian issues based on the 2017 report, entitled *Lancet Countdown on health and climate change*. The brief is directed towards Canadian policy-makers and was written by a team of medical doctors and researchers. CPHA edited and distributed the Report in partnership with *The Lancet*, one of the world’s oldest and most reputable peer-reviewed medical journals.
- (l) 2018 Report – *Lancet Countdown Report: Briefing for Canadian Policymakers*: This report is described in more detail below, and is attached as **Exhibit “D”**.

12. In 1992, CPHA was the first NGO to receive the Sasakawa Health Prize from the WHO. The Sasakawa Health Prize is awarded for outstanding, innovative work in health development, such as the promotion of health programs or notable advances in primary health care, in order to encourage the further development of such work.

(b) What is Public Health?

13. The concept of public health is central to the work of CPHA and to the issues raised in this Reference. Public health is by definition a domain with inter-jurisdictional accountability where all levels of government are responsible for different aspects of public health, requiring collaboration, cooperation and mutual accountability among the various levels of government in order to be efficacious.

14. Public health is not the same thing as publicly funded health care. Public health was defined in Canada's first Chief Public Health Officer's 2008 Report as "the organized efforts of society to keep people healthy and prevent injury, illness and premature death. It is a combination of programs, services and policies that protect and promote the health of all Canadians." While health care focusses on the provision of health services to individuals who are ill or injured, public health works to prevent people from becoming sick or sicker, and to address primordial² and primary prevention.³ For example, medical services treats an individuals' lung cancer, but public health services promote abstention from tobacco to prevent cancer. Excerpts from the Chief Public Health Officer's 2008 Report on the State of Public Health in Canada is attached as **Exhibit "E"**. The Chief Public Health Officer at that time was Dr. David Butler-Jones; a former President of CPHA.

15. Public health's primary focus is protecting and improving the collective health of the broader community. This "population health approach", targets entire populations by identifying and reducing health threats. For example, policies addressing issues such as poverty, housing, sanitation, food and drugs, and the environment directly and indirectly influence the health of populations.

16. Public health experts have long recognized an inexorable link between the environment and human health. Throughout the 20th and 21st centuries, public health evidence has demonstrated that human health outcomes are inseparable from

² Primordial prevention means preventing the emergence or development of risk factors by addressing the social and environmental conditions in which these factors are observed to develop. For example, encouraging children to adopt healthy lifestyles to prevent the emergence of health risks later in life.

³ Primary prevention is concerned with preventing the onset of disease by treating risk factors. Examples include changes to behaviours such as cigarette smoking or diet.

environmental conditions and policies. For more information about the environmental dimensions of public health, see CPHA's 2015 discussion document, *Global Change and Public Health: Addressing the Ecological Determinants of Health*, attached as **Exhibit "F"** ("CPHA Global Change and Public Health").

17. Core among public health principles for the purposes of this Reference is reliance on sound, scientific evidence. Such an approach focusses policy initiatives on evidence of what works or shows promise of working. This approach is key to understanding the hazards that GHG emissions and climate change pose to public health, and in developing effective policy responses.

18. The evidence-based public health approach has revolutionized human well-being in Canada and around the world. Population-focussed public health policies and practices have eradicated or controlled various sexually-transmitted (*syphilis*), nutritional (*scurvy*), occupational (*asbestosis*), and environmental (*lead and mercury poisoning*) diseases. For further detail, see the CPHA Conceptual Framework, attached at Exhibit "B". For more detail on the history of public health in Canada, see the Chief Public Health Officer's 2008 report attached at Exhibit "E".

19. Public health is ultimately a constitutional responsibility of government. The responsibility is shared by different jurisdictional levels including federal, provincial, territorial, municipal, and Indigenous governments. The obligations on governments are captured in a core principle of public health – stewardship. Stewardship places a duty on governments to act in ways that enhance the health of communities. The measures the governments adopt with a public health dimension must further the objectives of public health or, at minimum, not act as a detriment to public health.

20. CPHA believes that government policies including the *Greenhouse Gas Pollution Pricing Act* should be examined from a population health perspective.

II. CPHA'S INTEREST IN THIS REFERENCE

21. CPHA seeks leave to intervene in this Reference as it raises national public health issues of critical importance. These issues engage CPHA's primary purpose to advocate

for the improvement and maintenance of community health in Canada according to public health principles, including by advocating for evidence-informed responses to broad-based harms such as climate change. As described in more detail below:

- (a) Substantial and irrefutable scientific evidence has established that anthropogenic climate change is a critical public health issue. It is causing measurable impacts on the health of populations on a national and international scale, demonstrating an unacceptably high level of risk for the current and future health of populations across the world; and
- (b) The public health approach supports federal authority to coordinate an effective and consistent inter-jurisdictional response to climate change as a public health issue of national and international concern.

22. CPHA is deeply concerned with these issues as climate change is a critical public health issue that threatens to undermine the past century of gains in public health in Canada and internationally, achieved, in part, through CPHA's efforts since 1910.

(a) Specific Climate Change Impacts on Public Health

23. The causal link between GHG emissions, climate change, and negative public health impacts is incontrovertible.

24. The state of climate change science and its impacts is established by the work of the Intergovernmental Panel on Climate Change ("IPCC"). The IPCC was created in 1988 to regularly review and report on the state of knowledge on climate change. Its reports, including the 2014 and 2018 reports found in the Attorney General of Canada's record⁴ are based on the contributions of thousands of scientists around the world. The reports are endorsed by all 195 member governments after multiple rounds of expert drafting and review. Information on the IPCC's rigorous reporting process is attached to this affidavit as **Exhibit "G"**. IPCC reports provide a uniquely rigorous and balanced perspective that

⁴ See Exhibit "C" to the Affidavit of John Moffet, affirmed Oct 25 2018 [*Moffet Affidavit*], Canada's Record, Vol 1, Tab 1C [2014 IPCC Report] and Exhibit "D" to Moffet Affidavit, Canada's Record, Vol 1, Tab 1D [2018 IPCC Report].

reflects both scientific and political consensus on the state of climate science and its impacts.

25. The independent findings of Environment Canada in its comprehensive 7th *National Communication to the United Nations Framework Convention on Climate Change* ("UN Communication"),⁵ are consistent with the findings of the IPCC.

26. Climate change is widely recognized in the public health community as the biggest global health threat of the 21st century. The "*Lancet Countdown: Tracking Progress on Health and Climate Change*" (the "*Lancet Countdown*") is a global, interdisciplinary research collaboration between 27 academic institutions and inter-governmental organization that monitors the progress on the relationships between health and climate, and their implications for national governments. The central finding of the *Lancet Countdown* is that "the human symptoms of climate change are unequivocal and potentially irreversible – affecting the health of populations around the world today. While these effects will disproportionately impact the most vulnerable in society, every community will be affected."

27. The *Lancet Countdown 2018 Report: Briefing for Canadian Policy-Makers* ("Canadian Briefing 2018") attached at Exhibit "D" was released today, November 29, 2018, in parallel with the 2018 International *Lancet Countdown*, which is attached as Exhibit "H". Authored by physicians and public health experts, the *Canadian Briefing 2018* was developed in conjunction with Canadian Medical Association and draws on data provided by the *Lancet Countdown* to make evidence-informed recommendations. The *Canadian Briefing 2018* focuses on the links between climate change and health and their implications for Canadian policymakers.

28. The scientific record on the impacts of climate change on public health is extensive and establish with scientific certainty that climate change will have severely negative impacts on human health in North America and around the world.⁶ In Canada, public

⁵ See Exhibit "G" to Moffet Affidavit, Canada's Record, Vol 1, Tab 1G, [UN Communication].

⁶ 2018 IPCC Report, Canada's Record, Vol 1, Tab 1D at B5.2; 2014 IPCC Report, Canada's Record, Vol 1, Tab 1C at 7.

health impacts are expected to be particularly intense as warming is occurring at double the global rate.⁷ The Arctic, where the rate is triple the global rate, is considered by the IPCC to be one of the world's most vulnerable areas to the impacts of climate change.⁸

29. Some of these impacts are direct, immediate consequences of air pollution and higher temperatures. Others are indirect, but nonetheless causal, consequences of climate change. Some impacts are already being experienced throughout Canada, while others are not occurring now, but are highly likely to emerge in the future.

30. Direct and immediate public health impacts of climate change include:

- (a) *Heat-related illnesses*: Increased morbidity and mortality from illnesses exacerbated by heat, such as heat stroke, heat edema, heat rash, heat stress, acute cardiovascular disease such as heart attacks, and renal disease;⁹ and
- (b) *Air pollution-related illness*: Increased morbidity and mortality from illnesses exacerbated by higher GHG concentrations and ground-level ozone, including asthma, ischemic heart disease, stroke acute lower respiratory infections, lung cancer, and chronic obstructive pulmonary disease ("COPD").¹⁰

31. Indirect causally-linked public health impacts of climate change are scientifically established to include:

- (a) *Vector-borne diseases*: Increased prevalence of mosquito- and tick-borne diseases, due to expanded geographic range of disease-bearing insects

⁷ *UN Communication*, Canada's Record, Vol 1, Tab 1G at 178.

⁸ *2018 IPCC Report*, Canada's Record, Vol 1, Tab 1D at B5.1.

⁹ *Lancet Countdown 2018 Report: Briefing for Canadian Policy-Makers* [Canada Briefing 2018], Exhibit "C" to this affidavit at 8; *2018 IPCC Report*, Canada's Record, Vol 1, Tab 1D at B5.2; *UN Communication*, Canada's Record, Vol 1, Tab 1G at 187.

¹⁰ *Canada Briefing 2018*, Exhibit "D" to this affidavit at 11; *UN Communication*, Canada's Record, Vol 1, Tab 1G at 187.

due to warmer temperatures. This includes disease such as dengue fever and Lyme disease;¹¹

- (b) *Extreme weather events*: Increase in frequency and intensity of extreme weather events such as flooding, wildfires, heat waves, droughts and hurricanes;¹²
- (c) *Water-borne illness and contamination*: Increase in water-borne illnesses and contamination due to increased precipitation and flooding;¹³
- (d) *Additional respiratory diseases*: Further increase in respiratory illnesses mentioned above due to increased production of pollens and other allergens and regional incidents of wildfire smoke;
- (e) *Strains on food security*: Food security risks, such as crop yield uncertainty,¹⁴ ecological impacts on Indigenous hunting traditions,¹⁵ and impacts on fisheries due to ocean warming and acidification¹⁶ are expected; and
- (f) *Coastal population displacement*: Coastal communities are expected to be affected by rising sea levels, which in turn is expected to lead to human displacement, unstable shorelines, and flooding.¹⁷

32. Specific public health impacts of climate change that are already underway in Canada include:

- (a) *Lyme disease and West Nile virus*: Due to rising temperatures, the geographic spread of Lyme-disease-bearing ticks has led to a spike in diagnoses of Lyme disease in Canada. Similarly, the expanded range of

¹¹ *UN Communication*, Canada's Record, Vol 1, Tab 1G at 178.

¹² *UN Communication*, Canada's Record, Vol 1, Tab 1G at 184–185; *2014 IPCC Report*, Canada's Record, Vol 1, Tab 1C at 8.

¹³ *UN Communication*, Canada's Record, Vol 1, Tab 1G at 186.

¹⁴ *2014 IPCC Report*, Canada's Record, Vol 1, Tab 1C at 6, 13.

¹⁵ *UN Communication*, Canada's Record, Vol 1, Tab 1G at 184.

¹⁶ *2014 IPCC Report*, Canada's Record, Vol 1, Tab 1C at 6.

¹⁷ *2014 IPCC Report*, Canada's Record, Vol 1, Tab 1C at 13, 16.

West-Nile-bearing mosquitos has brought Canada the annual threat of West Nile disease;¹⁸

- (b) *Wildfires*: The historic 2016 Fort McMurray wildfire displaced 94,000 people and destroyed 2,400 homes and buildings with insured losses exceeding \$3.5 billion;¹⁹
- (c) *Floods*: Flooding in 2017 in Quebec and Ontario caused thousands to evacuate their homes and required military intervention;²⁰
- (d) *Heat waves*: An extreme heatwave in Quebec in 2018 has been linked to climate change and caused at least 90 deaths;²¹ and
- (e) *Destruction of northern infrastructure and livelihoods*: With the Arctic warming at triple the global rate, the Canadian North is already experiencing unique and dramatic impacts such as destruction of property and infrastructure due to permafrost melt, melting of glacial sea ice which provides traditional hunting routes, and thawing of winter ice roads which provide connectivity to and between remote communities.²²

(b) Public Health and Federal Role in Responding to Climate Change

33. Federal authority is essential to address the borderless impacts of climate change and is supported by the public health approach. As with other national public health issues, addressing climate change will require co-ordination between many levels of government. The federal government has a necessary leadership role to coordinate Canada's approach to this global issue, provide minimum standards and fill in gaps to reduce GHG emissions to ensure public health is protected across Canada. The IPCC

¹⁸ *UN Communication*, Canada's Record, Vol 1, Tab 1G at 178.

¹⁹ *UN Communication*, Canada's Record, Vol 1, Tab 1G at 184.

²⁰ *UN Communication*, Canada's Record, Vol 1, Tab 1G at 184.

²¹ *Canada Briefing 2018*, Exhibit "D" to this affidavit at 8.

²² *UN Communication*, Canada's Record, Vol 1, Tab 1G 184-185.

concludes that co-operative, multi-level governance is required to overcome regional constraints and achieve target emissions mitigation.²³

34. As an advocate of public health and healthy public policy, CPHA is interested in action at all levels of government to mitigate climate change. Similar to other national and global health issues, such as communicable disease prevention,²⁴ hazardous material standards,²⁵ or tobacco control initiatives,²⁶ reducing GHG emissions to avoid dangerous levels of climate change demands a federal role to co-ordinate and implement a rapid and far-reaching carbon pricing policy.

35. Climate change is a multi-sectoral problem. As the Countdown Report describes, GHG emissions can be attributed to land-based transportation, households, agriculture, marine shipping, electricity generation, and a variety of other sources.²⁷ The public health approach does not limit action to particular sectors. The IPCC has been clear with a high degree of scientific certainty, that rapid and far-reaching action is required across sectors to avert the impacts of climate change.²⁸

36. CPHA is interested in evidence-based healthy public policy, including behavioral change as a solution to public health problems. Carbon pricing is well-established as an effective and efficient regulatory mechanism to reduce GHG emissions through behavioural change, and thereby mitigate public health risks. Based on the best available evidence, the *Canadian Briefing 2018* report at Exhibit "D" recommends the application of carbon pricing instruments to address climate change and protect human health. Other authoritative health organizations such as the Canadian Medical Association ("CMA") have expressed support for carbon pricing in strong terms.²⁹

²³ 2014 IPCC Report, Canada's Record, Vol 1, Tab 1C at 4.1.

²⁴ Quarantine Act, S.C. 2005, c. 20; Human Pathogens and Toxins Act, S.C. 2009, c. 24.

²⁵ Canadian Environmental Protection Act, 1999, S.C. 1999, c. 33.

²⁶ WHO Framework Convention on Tobacco Control; Tobacco and Vaping Products Act, S.C. 1997, c. 13; Non-smokers' Health Act, R.S.C. 1985, c. 15 (4th Supp.).

²⁷ Canada Briefing 2018, Exhibit "D" to this affidavit at 11.

²⁸ 2014 IPCC Report, Canada's Record, Vol 1, Tab 1C at 3.3; 2018 IPCC Report, Canada's Record, Vol 1, Tab 1D C2.

²⁹ See Exhibit "H" to this affidavit, Letter of Support of Dr. Owen Adams, Chief Policy Advisor, CMA.

III. CPHA WILL CONTRIBUTE TO THE PROCEEDINGS

37. CPHA will contribute its distinct public health perspective and expertise, described above, to the constitutional issues raised in this Reference.

38. CPHA has experience contributing a public health perspective as an intervener in constitutional cases. CPHA sought and was granted leave to appeal by the Supreme Court of Canada in *Canada (Attorney General) v PHS Community Services Society*, 2011 SCC 44 ("*PHS*") and by the Ontario Superior Court of Justice in *Simons v Canada (Attorney General)*, 2018 ONSC 3741 ("*Simons*"). Both were constitutional cases regarding access to harm reduction for people addicted to intravenous drugs. In both of these interventions, CPHA assisted the Courts with its unique public health perspective on the constitutional issues raised.

39. CPHA believes that a focus on the public health impacts are necessary for this Honourable Court to appreciate the full extent of the national concern posed by climate change.

40. CPHA's application for intervention is supported by the CMA. A letter of support from Dr. Owen Adams, Chief Policy Advisor, CMA, is attached as **Exhibit "I"**.

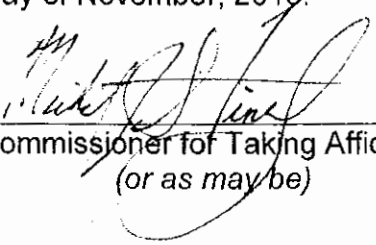
IV. CONCLUSION

41. CPHA seeks leave to intervene in this Reference due to the critical public health implications of the issues raised by this Reference, with the intention of providing this Honourable Court with helpful and distinct submissions on the issues to be determined.

42. CPHA will abide by all Court Orders, including any limits on the materials to be used at the hearing of the merits, the length of interveners' factum and time limits for oral argument. CPHA undertakes to consult with the parties and other interveners in an effort to avoid duplication of arguments.

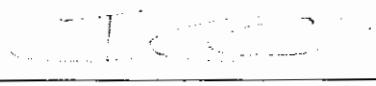
43. CPHA is a not-for-profit public interest association and is working with pro-bono counsel. CPHA requests that no costs be awarded for or against it in its proposed intervention.

SWORN BEFORE ME in the City of
Toronto, in the Province of Ontario, this
29th day of November, 2018.



Commissioner for Taking Affidavits
(or as may be)

Michael J.S. Finley



IAN CULBERT