

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

APPLICATION FOR INTERVENOR STATUS

KOWALCHUK LAW OFFICE

18 Patton Street
Regina, SK, S4R 3N9
(306) 529-3001

Larry Kowalchuk

Counsel for the Applicants

Preliminary Introduction	i
1. Applicants' Interest	i
2. Applicants' Position	2
3. Nature of the Arguments	ii
A. Greenhouse Gas Emissions are a National/International Concern	3
B. The GGPPA respects the principles of federalism	iii
C. The Federal Government is legally bound to protect Charter rights	v
D. The Federal Government is legally bound to comply with international obligations	v
4. Applicants' Contributions to Proceedings	vi
5. Additional Materials	7
Appendix A – List of Applicant Intervenors	8

Preliminary Introduction

This application for leave to intervene is made pursuant to s. 7 of *The Constitutional Questions Act, 2012* and the Order of Chief Justice Richards C.J.S. of the Saskatchewan Court of Appeal dated June 4, 2018. The list of Applicants is contained in the attached Appendix 'A'.

1. Applicants' Interest

The basis of the Applicants' interests in the issues raised by this Reference

Many of the organizations and individuals involved in this application live in or have strong ties to Saskatchewan. Many Applicants have a deep connection to this province and are invested in its future and how they contribute to the country as a whole, particularly in regard to climate change and contributors like GHG emissions which exacerbate the harm and intensity of climate change.

Collectively the Applicants represent citizens of Canada whose future and that of future generations are impacted by GHG emissions from other jurisdictions in Canada and the world. Canada shares the collective responsibility to mitigate climate change by reducing GHG emissions immediately. All levels of government from every jurisdiction have the duty to do whatever they can. Carbon pricing is one such policy that, as the Applicants will explain later, is an effective means to curbing greenhouse gas (GHG) emissions.

The Applicants will provide the voice and perspectives that represent Canadian people, particularly of those perspectives unique to Saskatchewan as perhaps the highest per capita emitter in the world. The Applicants applaud the Government of Saskatchewan for taking the initiative to identify and clarify these legal obligations through the Court of Appeal constitutional reference process. The Applicants seek the court's approval in allowing their voices to be heard to assist in that task by speaking about the national concern of climate change and the threats posed to the Applicants. The Applicants seek leave to speak about the right to life under international law, Canadian Charter rights and the public trust as it applies to the division of powers and the double aspect of environmental protection between the provincial and federal governments. Therefore, the Applicants are making this application in support of the position that the *Greenhouse Gas Pollution Pricing Act* (GGPPA) must be upheld.

2. Applicants' Position

The position the Applicants intend to take on the question posed to the Court

The Applicants oppose the Attorney General of Saskatchewan's position and support the Attorney General of Canada and submit that the GGPPA is constitutional. The Applicants intend to address primarily the first issue raised by the Attorney General of Saskatchewan:

- (a) Is there any unwritten constitutional principle that prevents the federal government from exercising its legislative jurisdiction in a way that singles out particular provinces for the application of federal laws in order to override decisions made by those provinces with respect to matters falling within their jurisdiction?

The matter at hand – regulating GHG emissions – is not within anyone's sole jurisdiction. At minimum the Federal Government has the constitutional authority to enact the GGPPA and all other jurisdictions have legal authority to enact laws which do better, or do more, to combat climate change contributors like GHG emissions. The Federal Government has legal authority to set minimum standards and laws to meet their international and constitutional obligations to citizens of Canada and worldwide regarding climate change.

3. Nature of the Arguments

The nature of the arguments the Applicants intend to advance

The Applicants submit that the carbon pricing legislation is constitutional for the following reasons:

1. The Federal Government can enact the GGPPA using their constitutional powers under the residual power of Peace, Order, and Good Governance (POGG).
2. The GGPPA respects the principles of federalism.
3. The Federal Government has a duty to protect Canadians' s.7 rights to life, liberty, and security of the person.
4. The Federal Government has a legal obligation to follow international law(s) regarding environmental defense against climate change.

In this application, the Applicants provide a brief summary of their approach to each of the above and will expand on each position if granted intervenor status.

A. Greenhouse Gas Emissions are a National/International Concern

The Applicants submit the following:

1. GHGs play a primary role in human-made climate change and its exacerbation.
2. The scale and nature of GHG emissions requires the Federal Government's involvement and is therefore an issue of national concern.
3. The purpose of the GGPPA is to lower Canadians' carbon emissions.
4. The Federal Government has the jurisdiction to address issues of national concern through their authority over POGG.

GHGs do not abide by borders and will not necessarily remain in the province that produced them. Rather, GHGs disperse throughout the atmosphere quickly and have both extra-provincial and international effects as a result. One province alone cannot lower Canada's GHG emissions. Even if a province disproportionately feels the impact of climate change, and decides to act alone, they would be unable to address the problem due to the GHG emitting activities of another jurisdiction. Effectively addressing GHG emissions requires each province to act in a coordinated effort, but because provinces have no authority over one another, working together can be extremely difficult, especially if some jurisdictions refuse to act. To accomplish effective GHG reduction strategies, the Federal Government must play a role, which they have done through the GGPPA pursuant to the national concern branch of POGG. The Applicants intend to expand further on the legal tests, related jurisprudence, and analysis should the court accept this application.

B. The GGPPA respects the principles of federalism

The Applicants submit the following:

1. The Federal Government has taken a cooperative, flexible approach to the issue.
2. The GGPPA does not prevent a province from enacting their own GHG laws and regulations which exceed the minimum standard set by the Federal Government.
3. The Provincial Government's position encourages a more stringent approach contrary to the principles of federalism.
4. The principles of federalism are an interpretative tool and not a bar to legislation that is constitutional in accordance with a traditional pith and substance analysis.

In many ways, the Federal Government's approach respects federal-provincial cooperation and provincial autonomy. Particularly if we look to the surrounding context in which

the Federal Government developed their approach, the GGPPA has its basis in cooperative federalism. The Federal Government gave provinces two years to develop their own carbon pricing regime. As long as the province met the federal benchmark, that province could create their own approach and essentially “opt out” of the GGPPA.

Further, the Federal Government is regulating GHG emissions so that provinces who want to deal with the impacts of climate change within their borders can do so effectively. Without the Federal Government intervention, a province’s efforts to deal with climate change may be negated by another jurisdiction’s inaction. By ensuring a minimum price on carbon across Canada, the GGPPA puts every jurisdiction on a fair “playing field” so that provinces who choose to mitigate GHG emissions can succeed. This approach provides for provincial autonomy within the context of cooperative federalism as long as it meets the minimum standards.

If Provinces want to enact laws/policies which tackle climate change more aggressively than the Federal government, yes please. They have the jurisdiction to do so using the public trust doctrine, the Charter and international law. What they cannot do is block the Federal government from doing its best to stop climate change. We must all use our authority as governments, courts, organizations and individuals to collectively combat climate change.

This is a local, provincial, state, national and international emergency which threatens our lives and the lives of future generations which needs perhaps limitless efforts to succeed as best we can.

The Federal Government has minimized any impact on provincial autonomy that the Government of Saskatchewan alleges by constructing the carbon pricing framework such that (a) these provinces still have the ability to regulate GHGs, and (b) provinces can choose how to reduce their emissions. What the Federal Government has done through the GGPPA is to introduce a minimum standard to keep all provinces consistent in their approach to the price on carbon and maximize the effectiveness of each province’s initiatives. Strangely, although the Government of Saskatchewan takes the position that the backstop is an infringement of the principles of federalism, they would not oppose a nationally imposed uniform carbon price, which is an even more stringent approach.

The Supreme Court of Canada has confirmed that each level of government has the authority and responsibility to deal with environmental issues. The Federal Government’s position is a balanced approach to the matter of GHG emissions and climate change. The

Applicants intend to explain further the role of federalism in constitutional analyses and how the GGPPA respects the principles of federalism.

C. The Federal Government is legally bound to protect Charter rights

The Applicants submit the following:

1. Section 7 of the Charter protects Canadians' rights to life, liberty, and security of the person.
2. GHG emissions are a major cause of climate change, which threatens Canadians' rights to life, liberty, and security of the person.
3. The right to life, liberty, and security of the person must therefore implicitly include the right to a healthy environment.
4. By extension of the legal obligation to protect s. 7 rights, the Federal Government must lower GHG emissions to ensure a healthy environment.

Climate change is threatening current and future generations of Canadians' rights to life, liberty, and security. Climate change has resulted in unprecedented floods, acid rain, forest fires, droughts, soil erosion, and many other environmental disasters. Climate change threatens our food security, water security, and our infrastructure; these effects grow in frequency and intensity as the GHG concentration in the atmosphere rises. As many of the effects of climate change are not felt immediately, there are escalating concerns for future generations who are unable to avoid these delayed impacts.

Our governments regulate the release of toxins in the environment, fine those who break environmental laws, and enact policies to encourage industry and individuals to emit less pollution. Our governments do so to protect the health of the environment for current and future generations. The action/non-action of our governments clearly have a direct impact on our abilities to stop, reduce, or mitigate the effects of climate change, which relates to our rights to life, liberty, and security. Striking down the GGPPA would violate Canadians' s. 7 rights.

The Applicants intend to expand further on how high GHG emissions impact s. 7 rights, particularly on Saskatchewan, and why the court should recognize a right to a healthy environment.

D. The Federal Government is legally bound to comply with international obligations

The Applicants submit the following:

1. International laws and agreements exist because countries recognize the impact GHGs emissions have on the world.
2. Canada is a part of an international community and has entered into agreements regarding GHG emission targets.
3. The United Nations has recently and explicitly affirmed the ‘right to life’ as including water, air and an environment which ensures the health and safety of all citizens and future generations in stopping climate change.
4. In accordance with international law, Canada has a legal obligation to abide by such agreements.

Some courts have recognized the environment as a person with its own rights and the ‘right to life’ as including citizens’ rights to have government act to stop climate change.

Canada has currently signed on to the Paris Agreement, as explained in the Federal Government’s factum starting in paragraph 62, agreeing to reduce their emissions by 30% below the 2005 baseline year by 2030. In accordance with international law jurisprudence, Canada must meet its target. In aligning ourselves with the direction of the international community, Canada is strengthening the global collective effort to tackle climate change.

4. Applicants’ Contributions to Proceedings

An explanation of what the Applicants’ participation in the Reference will add to the proceedings.

The Applicants have various backgrounds and expertise that would help provide guidance on this issue, such as education in the sciences, economics, environmental sustainability, agriculture, among others. To maximize efficiency and minimize any prejudice on the immediate parties, the Applicants have invited several organizations to join one single application. Counsel for the joint applicants will draw on these experts to formulate a coherent, comprehensive argument. Collectively, the Applicants are able to speak to the following:

- Relevant constitutional and environmental laws;
- The science and economics behind climate change and carbon pricing;
- The impacts carbon pricing will have on Canada, particularly in Saskatchewan and agriculture, to better understand the purpose and practical effects of the GGPPA;

- How climate change impacts s. 7 Charter rights; and
- The importance and role of international laws and agreements regarding climate change.

Attached as Appendix “A” is a more extensive description of the organizations involved to give the court a better understanding of their backgrounds and potential contributions.

5. Additional Materials

Additional information and materials the Applicants seek leave to include in the record to facilitate or ground its submissions

- International covenants adopted and/or signed by Saskatchewan and Canada;
- International laws regarding climate change;
- International agreements/protocols regarding climate change adopted by Canada;
- Agreements signed and/or adopted by Saskatchewan regarding climate change;
- Scholarly reports from international agencies and scientists relevant to climate change;
- Affidavits on the topic of climate change and GHG and other emissions which contribute to climate change which are emitted in Saskatchewan;
- Reports of Canadian agencies including government agencies regarding the targets for emissions for effective reduction of the climate change threats and Canada’s level of action to meet those targets;
- Reports and studies from other agencies in other countries regarding climate change and global emissions; and
- Case law from other courts in other countries regarding obligations of governments regarding climate change and the ‘moral imperative’ of stopping it.

All of which is respectfully submitted this 30th day of November, 2018



Larry Kowalchuk

Lawyer

On Behalf of the Applicants

APPENDIX ‘A’**List of Applicant Intervenors**

NAME	ORGANIZATION DESCRIPTION	CONTACT INFORMATION
Climate Justice Saskatoon (CJS)	CJS advocates for public policy which takes fully into account the findings of climate science, while meeting human needs and conforming to basic principles of equity.	Tracey Mitchell 1013 Lansdowne Ave. Apt 201 Saskatoon, SK S7H2C2 306-321-5097 facilitrace@gmail.com
National Farmers Union (NFU)	The NFU is an organization made up of Canadian farm families who work together to achieve agricultural policies that ensure the dignity and security of income for current and future generations of farm families. The membership has extensive knowledge in agriculture and farming practices. The membership depends on climate stability for their livelihood and are therefore invested in initiatives to lower greenhouse gas emissions and mitigate against climate change-related disasters. As agriculture is a vital part of the Saskatchewan identity, particularly in rural areas, the NFU supports the constitutionality of carbon pricing.	Stewart Wells Box 545 Swift Current, SK S9H 3W4 306-773-6852 Toews.wells@sasktel.net
Saskatchewan Coalition for Sustainable Development (SCSD)	The SCSD promotes awareness and advocates for the implementation of policies within the province of Saskatchewan that are aligned with regional obligations to contribute toward achieving the core objectives of the Paris Agreement on Climate Change along with the Sustainable Development Goals (SDGs) developed by the of the United Nations.	David D. Maenz 816 Colony St Saskatoon, SK S7N 0S1 (306) 220-6691 dave@thepriceofcarbon.com
Saskatchewan Council for International Cooperation (SCIC)	The SCIC represents a diverse range of international organizations with a focus on public engagement on international issues, including sustainability, human rights, and global development.	Jessica Wood 2138 McIntyre Street Regina, SK S4P 2R7 SCIC.executive@earthbeat.sk.ca
Saskatchewan Electric Vehicle Club (SasEV)	SasEV works to build momentum for electric vehicles in Saskatchewan by advocating for wider vehicle selection, EV related infrastructure and	Jason Cruickshank PO Box 455 Vanscoy, SK S0L3J0

	<p>incentives while also building community awareness for the availability and strengths of electric vehicles. This includes their role in reducing and eventually eliminate greenhouse gas emissions from transportation here in Saskatchewan.</p>	<p>info@saskev.ca (306) 500-7420</p>
<p>The Council of Canadians: Prairie and Northwest Territories Region</p>	<p>Founded in 1985, the COC is a social and environmental justice organization with a network of 60 chapters across the country. On climate change, the COC: Prairie and NWT region educates and empowers people to hold governments and corporations accountable to a just transition to 100% renewable energy in line with the Paris Agreement. Our Regional Director was a delegate with the Canadian Youth Delegation at COP20 and 21 and has an MSc from Oxford in Environmental Change and Management.</p>	<p>Bronwen Tucker Regional Director 602 - 12323 Stony Plain Road Edmonton, AB T5N 3Y5</p>
<p>The Council of Canadians: Regina Chapter (COC: Regina)</p>	<p>The COC: Regina has about 50-100 supporters in and around Regina. They have been working on the five themes of action, climate change and energy, healthcare, water, trade and democracy, and partner with others on broad based fossil fuel issues in Saskatchewan. Members of this chapter have knowledge in the fossil fuel sector and the sciences.</p>	<p>Jim Elliott 2108 Reynolds Street Regina, SK S4N 3N1</p> <p>Home: 306-352-4804 Cell: 306-551-8500</p>
<p>The Council of Canadians: Saskatoon Chapter (COC: Saskatoon)</p>	<p>The COC: Saskatoon chapter has been focusing on questions of climate change for several years. They understand the profound and total need to phase out the production and consumption of fossil fuels. The COC: Saskatoon believes that a carbon price is a reasonable way to encourage a solid reduction in the amount of oil, coal and natural gas being taken out of the ground. The COC: Saskatoon therefore supports the right of the federal government to introduce such measures as a carbon price to help reduce Canada's level of fossil fuel production and consumption.</p>	<p>David Greenfield PO Box 9053 Saskatoon, SK S7K 7E7 greendl@sasktel.net</p> <p>Anne Brander abrander@sasktel.net</p>
<p>The New Brunswick Anti-Shale Gas Alliance (NBASGA)</p>	<p>The NBASGA is a coalition of over twenty organizations working to protect the present and future generations of New Brunswick citizens against climate change including the stopping of GHG emissions from the fossil fuel industries like</p>	<p>Jim Emberger shaleinfo.nb@gmail.com 506 367-2658</p> <p>Roy Ries</p>

	<p>shale gas and unconventional gas and oil development. It is comprised of Anglophone and Francophone groups from across the province and works closely with the indigenous people of the province. The NBASGA played a large role in securing a moratorium on shale gas through its educational, activist, and legal activities, including the filing of a lawsuit against the province based upon the legal obligations of governments under international law, public trust doctrine and S.7 of the Canadian Charter. It has done and continues to do extensive work and research on the issues related to climate change.</p>	<p>ethelroy@xplornet.ca 506 882-1011</p> <p>King Street, PO Box 2011, Riverside-Albert, NB E4H4B0</p>
<p>Youth of the Earth (YOTE)</p>	<p>YOTE is a volunteer group of Saskatchewan youth concerned about climate change and its impact on our lives and our futures. YOTE supports and urges all levels of government to do all they can to reduce and eventually eliminate all contributors to climate change including GHG emissions. YOTE support carbon pricing as one of those efforts and that our Canadian federal government must have the authority to live up to the international obligations of all governments to do all possible to stop climate change. The YOTE fears that without such legal authority being supported, futures of the Canadian people are in jeopardy.</p>	<p>Lia Storey-Gamble 2417 Cumberland Ave S, Saskatoon Saskatchewan liaandsunny@msn.com</p>