

January 14, 2021

“Textbook Climate Denialism”: A Submission to the Public Inquiry into Anti-Alberta Energy Campaigns

By: Martin Olszynski

Matter Commented On: [Public Inquiry into Anti-Alberta Energy Campaigns](#)

After [two deadline extensions and an additional \\$1 million dollars](#), Premier Jason Kenney’s [Public Inquiry into Anti-Alberta Energy Campaigns](#) is entering its final stretch (for previous ABlawg posts, see [here](#), [here](#), [here](#), and [here](#)). Back in October of 2020, I decided to seek, and was granted, standing to participate in the Inquiry. As has been my practice in such matters, what follows is my submission, dated December 15, 2020, modified only for formatting purposes. Links to reports provided to me by the Commissioner are to the Inquiry’s website, which has recently been [updated](#).

Commissioner Allan,

On November 9, 2020, the Public Inquiry into Anti-Alberta Energy Campaigns sent me the following Commissioned Reports for comment:

- A. Background Report on Changes in the Organization and Ideology of Philanthropic Foundations with a Focus on Environmental Issues as Reflected in Contemporary Social Science Research – Dr. Barry Cooper. ([“Cooper Report”](#))
- B. A New Global Paradigm: Understanding the Transnational Progressive Movement, the Energy Transition and the Great Transformation Strangling Alberta’s Petroleum Industry, including an October 2020 supplement – Dr. T. L. Nemeth. ([“Nemeth Report”](#));
- C. Foreign Funding Targeting Canada’s Energy Sector - Energy in Depth. ([“Energy In Depth Report”](#))

In addition to the Commissioned Reports, the Commissioner sent me the following additional reports and publications for comment on that date:

- 1. A World Class Environmental Monitoring, Evaluation and Reporting System for Alberta – The Report of the Alberta Environmental Monitoring Panel ([“Alberta Environmental Monitoring Panel Report”](#))
- 2. False Alarm: How Climate Change Costs Us Trillions, Hurts the Poor, and Fails to Fix the Climate - Bjorn Lomborg
- 3. Apocalypse Never: Why Environmental Alarmism Hurts Us All – Michael Shellenberger
- 4. [Mines, Minerals, and “Green” Energy: A Reality Check](#) - Mike Mills

Subsequently, on November 18, 2020, the Commissioner sent me the following additional publication, which explores the tactics of a global consulting firm (FTI) that appears to have connections to Energy In Depth, the author of the third Commissioned Report:

5. [“How One Firm Drove Influence Campaigns Nationwide for Big Oil”](#) - Hiroko Tabuchi, New York Times (November 11, 2020)

The Commissioner has invited me to respond to a series of questions in relation to most of these Commissioned Reports, reports or publications (as further set out below). The Commissioner has stressed, however, that my commentary is not restricted to those questions, nor am I restricted to these Commissioned Reports, reports and publications (*i.e.* I may refer the Commissioner to additional articles, reports and publications).

My submission is divided as follows. In Part I, I set out a framework that I have adopted in assessing the materials provided to me (*i.e.* how much weight to give them). As further explained below, this framework is loosely built on the Supreme Court of Canada’s approach to expert evidence in the civil litigation context. While the rules of evidence can be somewhat relaxed in the administrative context, [the Inquiry is nevertheless bound by a duty of procedural fairness](#) and this may limit the kind of evidence that the Commissioner can rely on or the weight given to it. In this part, I also apply this framework to the four reports provided to me (the three Commissioned Reports and the Alberta Environmental Monitoring Panel Report). In Part II, I respond to the Commissioner’s specific questions and provide links to additional reports and publications that I submit are relevant to the Commissioner’s understanding of the issues raised by the materials sent to me and the Inquiry more generally. My answers are preceded with an “**MO**”.

My general assessment is that by and large the Commissioned Reports are textbook examples of climate change denialism. All of them minimize or outright dismiss the reality and seriousness of climate change, even though none of their authors appear to be trained in climate science [at the time of writing, I did not have access to Dr. Nemeth’s *c.v.*, but its recent receipt confirms this gap]. These reports are replete with generalizations, speculation, conjecture, and even conspiracy. The matter of climate change denial is particularly important because it underpins the rest of the narrative in these reports, *i.e.*, that other interests have opposed the oil and gas industry – including Alberta’s – not out of genuine concern for the climate or other environmental impacts but rather for some nefarious – perhaps even Marxist (Cooper Report at 20) – purpose, *e.g.* that a “Transnational Progressive Movement” has infiltrated governments, the United Nations and large corporations (Nemeth Report at 47) in order to impose material poverty on developed nations (Nemeth Report at 75 – 76).

Fortunately for the Commissioner, the facts regarding climate change have recently been tested in Canadian courts. Appellate courts in Saskatchewan, Ontario, and Alberta have all recently considered the evidence for anthropogenic climate change in the context of their own respective references into the constitutionality of the federal government’s *Greenhouse Gas Pollution Pricing Act* [SC 2018, c 12, s 186](#) (*GGPPA*). I have included several relevant excerpts from each

of these decisions at Appendix A to this submission. For the purposes of this introduction, the following passages – one from each appellate court – should suffice:

Reference re Greenhouse Gas Pollution Pricing Act, [2019 SKCA 40 \(CanLII\)](#) at para 4: “The factual record presented to the Court confirms that climate change caused by anthropogenic greenhouse gas [GHG] emissions is one of the great existential issues of our time. *The pressing importance of limiting such emissions is accepted by all of the participants in these proceedings.*” [emphasis added]

Reference re Greenhouse Gas Pollution Pricing Act, [2019 ONCA 544 \(CanLII\)](#) at para 11: “This global warming is causing climate change and its associated impacts. *The uncontested evidence before this court shows that climate change is causing or exacerbating:* increased frequency and severity of extreme weather events (including droughts, floods, wildfires, and heat waves); degradation of soil and water resources; thawing of permafrost; rising sea levels; ocean acidification; decreased agricultural productivity and famine; species loss and extinction; and expansion of the ranges of life-threatening vector-borne diseases, such as Lyme disease and West Nile virus.” [emphasis added]

Reference re Greenhouse Gas Pollution Pricing Act, [2020 ABCA 74 \(CanLII\)](#) at para 1: “Calls to action to save the planet we all share evoke strong emotions. And properly so. *The dangers of climate change are undoubted as are the risks flowing from failure to meet the essential challenge. Equally, it is undisputed that greenhouse gas emissions caused by people (GHG emissions) are a cause of climate change. None of these forces have passed judges by.* The question the Lieutenant Governor in Council referred to this Court though – is the *Greenhouse Gas Pollution Pricing Act*, SC 2018, c 12 (*Act*) unconstitutional in whole or in part – is not a referendum on the phenomenon of climate change. Nor is it about the undisputed need for governments throughout the world to move quickly to reduce GHG emissions, including through changes in societal behaviour. The federal government is not the only government in this country committed to immediate action to meet this compelling need. Without exception, every provincial government is too.” [emphasis added]

It is both telling and relevant that no province opposed to the *GGPPA* sought to deny the threat of anthropogenic climate change (see also [here](#) for a recent U.S. example). Simply put, such arguments would not fare well against the most basic evidentiary requirements. Stripped of their climate change denialism, then, the Commissioned Reports tell the rather uncontroversial story of the recognition of a significant global environmental threat and subsequent efforts, first by scientists but eventually also by civil society, governments, and international institutions, to address it. Viewed this way, it is hardly surprising that non-governmental organizations would occasionally receive international funding.

PART I: A FRAMEWORK FOR ASSESSING EXPERT EVIDENCE

As noted above, my proposed framework for assessing the Commissioned Reports is loosely built on the Supreme Court of Canada’s own approach to [expert evidence in the civil litigation context](#).

- 1) **Relevance:** is there a relationship between the contents of the Commissioned Report or publication and the material facts in issue before the Commissioner, which tends to prove those facts?
- 2) **Expertise:** Does the author of a Commissioned Report or other publication possess the relevant expertise (*i.e.* qualifications)?
- 3) **Impartiality:** Is the author of a Commissioned Report or other publication impartial, independent, and without bias, or does there exist a relationship or interest that renders the author unable to provide fair, objective, and non-partisan assistance to the Inquiry?

I encourage the Commissioner to apply this or a similar framework when determining the weight to give the Commissioned Reports and other publications. My own application of this framework, which focuses on the factors that I consider problematic, is set out below. First, however, it is useful to recall the Inquiry’s mandate. As set out in the Inquiry’s [Terms of Reference](#), “The Commissioner shall inquire into the role of foreign funding, if any, in anti-Alberta energy campaigns...” The Commissioner has [interpreted](#) “anti-Alberta energy campaigns” to be those that opposed the “development [of] Alberta’s oil and gas resources in a broad and general sense.”

A. The Cooper Report: Speaking to relevance and consistent with the general assessment set out above, Dr. Cooper’s Report is replete with generalizations, speculation, and conjecture. More importantly, however, I have serious reservations as to whether Dr. Cooper was able to provide fair and objective assistance to the Inquiry.

In a [2008 Globe and Mail article](#), Dr. Cooper was described as “a regular columnist in the Calgary news media and a vocal critic of individuals who have “bought in to the global warming panic.” Furthermore, from this same article it appears that Dr. Cooper was “at the centre” of an audit that found that “donations to two research accounts at the [University of Calgary] were used to pay expenses for the Friends of Science, a Calgary based anti-Kyoto group with ties to the federal Conservative Party. Friends of Science used the money to produce and pay for radio ads in key Ontario ridings during the 2006 election campaign.”

I pause to add here that the foregoing undermines an earlier assertion made by the Commissioner to me that “the Commissioned Reports were not commissioned with any predetermined expectation or intention that they would disclose any particular perspective on the subject matter of the Commissioned Reports.” At the very least, the prior views of Dr. Cooper and Energy in Depth (a project of the [Independent Petroleum Association of America](#)) should have been clear to the Commissioner. The effect of all of this is that the Commissioner has spent nearly CAN\$100,000 to commission these – and only these – reports [the Commissioner confirmed to me that Dr. Cooper was paid \$6,125; Dr. Nemeth was paid \$27,840, and Energy in Depth was paid US\$50,000], which the Inquiry has

acknowledged all “approach the subject matter of the Inquiry from a *common perspective*.” Simply put, it is troubling that the Inquiry did not commission *any* reports from the alternative perspective and, with respect, is suggestive of bias.

- B. The Nemeth Report:** It is difficult to conclusively assess the value of the Nemeth Report without further information about Dr. Nemeth’s qualifications. To an even greater extent than Dr. Cooper’s report, however, the Nemeth Report relies on generalizations, speculation, conjecture, and even conspiracy.
- C. The Energy in Depth Report:** My primary concern with Energy in Depth is similar to the concerns regarding Dr. Cooper (*i.e.* impartiality) – only stronger. Energy in Depth is a *part* of the petroleum industry. Such concern is further substantiated by the Hiroko Tabuchi piece in the New York Times (November 11, 2020) and not affected by Energy in Depth’s response.
- D. Alberta Environmental Monitoring Panel Report:** Although not commissioned by the Inquiry, I have assessed this report against my proposed framework to show that it can lead to a positive conclusion: the Alberta Environmental Monitoring Panel Report has all the hallmarks of relevant, expert and impartial evidence.

PART II: QUESTIONS AND ANSWERS

Q1. The Nemeth Report may be read as suggesting that environmental non-governmental organizations and activists are key players in a movement funded by well-endowed foundations and interested governments, which movement operates as a decentralized network that is aligned and ideologically motivated to act in concert to end the use of fossil fuels.

Do you agree or disagree with Dr. Nemeth’s conclusion? Why? From a policy perspective, what are your views on the role of foreign foundations and governments funding efforts in Alberta to reduce or end the use of fossil fuels?

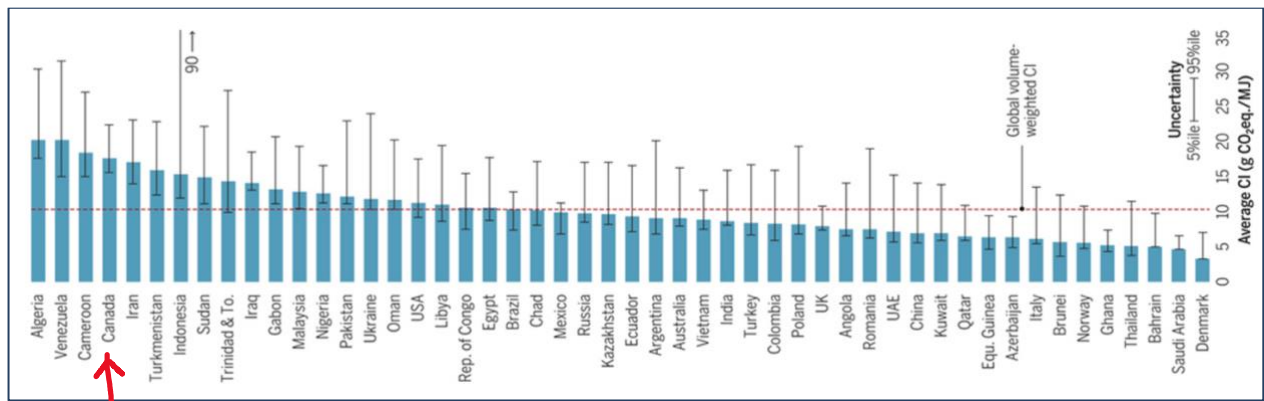
MO1: As should be clear by now, I disagree entirely with the narrative and conclusions put forward by Dr. Nemeth. First and foremost, I vehemently disagree that climate change is merely a “pretext” or “marketing tool” to pursue and achieve a voluntary relatively non-violent overthrow of capitalism and our current modern industrial society.” (Nemeth Report at 17). I encourage the Commissioner to engage qualified climate scientists to consult and summarize the leading scientific papers and reports with respect to climate change (see *e.g.* Mann, Michael E.; Bradley, Raymond S.; Hughes, Malcolm K. (1999), [“Northern hemisphere temperatures during the past millennium: Inferences, uncertainties, and limitations”](#), *Geophysical Research Letters*, 26 (6): 759–762; Intergovernmental Panel on Climate Change, *Climate Change 2014: Synthesis Report 10* (R.K. Pachauri & L.A. Meyer Eds, 2015); Heede, R. Tracing Anthropogenic Carbon Dioxide And Methane Emissions To Fossil Fuel And Cement Producers, 1854–2010. *Climatic Change* 122, 229–241 (2014)).

Q2. The Nemeth Report suggests that the North American Tar Sands Coalition Strategy of 2008 was an early campaign of a movement to create a new energy paradigm for the world, and such

campaign was not concerned with making Alberta or Canada suffer in particular, but rather was concerned about transforming western industrial economies and societies to shift off fossil fuels. The Nemeth Report may further be read as suggesting that in this context Alberta’s oilsands reserves were an easy target that gained prominence when they were acknowledged as a proven reserve, increasing Canada’s reserves to among the largest in the world.

Do you agree or disagree with Dr. Nemeth’s conclusion? Why?

MO2: Again, I disagree with Dr. Nemeth’s conclusions. What appears to be conveniently missing from the Nemeth Report is the fact that, based on available evidence, Alberta’s oil sands reserves have been – and continue to be – amongst the most GHG intensive in the world. This provides an alternative, and arguably more rational, basis for their being an “easy target.” See M. Masnadi et al., “Global carbon intensity of crude oil production” *Science* (31 Aug 2018), Vol. 361, Issue 6405, pp. 851-853 DOI: 10.1126/science.aar6859 (see figure below)



In addition, several expert panels have previously noted the GHG intensive nature of Alberta’s oil sands, and that while some progress has been made it has not been sufficient:

- The Royal Society of Canada, “[Environmental and Health Impacts of Canada’s Oil Sands Industry](#)” (2010) (Executive Summary) at p 29:
 - “The environmental footprint of bitumen production activities is considerable, with major air, water, and land dimensions.... *Air emissions are large both absolutely and in comparison to those associated with conventional crude oil production in the province and other industrial activities in Canada.*”
- Council of Canadian Academies, 2015. [Technological Prospects for Reducing the Environmental Footprint of Canadian Oil Sands](#). The Expert Panel on the Potential for New and Emerging Technologies to Reduce the Environmental Impacts of Oil Sands Development, Council of Canadian Academies at xiii:
 - “*Improvements in GHG production intensity on a per barrel of bitumen basis have stagnated recently due to higher levels of in situ production. These intensities are projected to increase again in the absence of new technology...*”

Q3. The Nemeth Report may be read as suggesting that some advocacy programs are directed at children.

Do you agree or disagree with Dr. Nemeth’s conclusion? Why? Do you believe that there are any compelling policy considerations that arise in regards to interactions between advocacy organizations and youth? If so, to what extent are these policy considerations different if foreign funding plays a role in such advocacy programs?

MO3: Questions in relation to advocacy and youth are well beyond my area of research. I will say, however, that if there are compelling policy considerations that arise in this context, then they would obviously apply to *all* sides of a given policy debate. Similarly, if foreign funding is relevant to these policy considerations, it must be relevant to all sides of a given debate, bearing in the mind the [potential section 2 Charter implications \(freedom of expression\)](#) in particular.

Q4. The Cooper Report refers to a “Design to Win” project advanced by certain foundations (see page 14), in which Dr. Cooper asserts replacing existing electricity generation capacity with nuclear energy, and substituting natural gas for coal, appears to have been ignored. Instead, Dr. Cooper refers to a strategic objective of the project to mobilize public demand for legislative action, through what Dr. Cooper describes as alarmist rhetoric.

Do you believe that, as a general matter, issues related to the energy industry seem to be increasingly polarized and as a result, partisan debate is intensified? If so, do you consider this to be part of a deliberate strategy by any party or parties; and if so, on what basis do you draw this conclusion?

MO4: I do agree that issues related to the oil and gas sector seem to be increasingly polarized and partisan; as I have indicated [elsewhere](#), the launching of this Inquiry is itself a manifestation of this problem. I also refer the Commissioner to answer MO9 (below), which examines the relationship between one pro-oil advocacy group and conservative political parties in Canada.

Q5. The Alberta Environmental Monitoring Panel Report proposes the need for a new approach to environmental monitoring, evaluation and reporting in Alberta and recommends the institution of a province wide system to achieve this (Recommendation 5).

Are you aware of whether any improvements to environmental monitoring, evaluation and reporting in Alberta have been instituted subsequent to the Report? Do you believe that Albertans have sufficient access to reliable information regarding environmental monitoring, evaluation and reporting in the province? If not, what can be done to improve Albertans’ access to such information?

MO5: Before answering these questions, it is appropriate to stress the primary and very problematic findings of this report (I have summarized some of these in previous correspondence with the Commissioner):

“While not all monitoring organizations and activities are deficient in the same areas, shortcomings generally focus on the following themes:

- Monitoring programs are not properly designed. Monitoring requirements have evolved over time and program design has, in many cases, not kept pace.
- Monitoring organizations suffer from inadequate funding, weak scientific direction, and a general lack of resources to take on the enormous challenge of monitoring.

- Monitoring results are not communicated or made available in transparent, useful formats...

Consequently, the overall “state of the environment” is not well understood... (at 25).

These findings validate concerns previously raised by the Royal Society of Canada (2010, referred to above) that the “*environmental regulatory capacity of the Alberta and Canadian Governments does not appear to have kept pace with the rapid growth of the oil sands industry over the past decade.*” As I have stated previously, these and other reports seriously undermine the Government’s contention that development has been timely, efficient, or responsible.

Returning to environmental monitoring in Alberta, some improvements were made initially, including the funding of the Joint Oil Sands Monitoring Program (JOSMP, now simply referred to as the Oil Sands Monitoring Program) and the creation of the arm’s length Alberta Environmental Monitoring, Evaluation and Reporting Agency (AEMERA) (see [here](#) for an early assessment). However, AEMERA was wound down several years ago and recent media reports suggest that monitoring capacity within the government of Alberta is again in disarray (see Terry Reith, “[Scientists sound alarm over Alberta’s new approach to tracking oilsands pollution](#)” CBC News, September 18, 2019). The timing of this could not be worse, as a recent (2020) “[Factual Record](#)” prepared by the Commission for Environmental Cooperation, (CEC, established under *NAFTA* and continued under the *USMCA*) has confirmed that there is “scientifically valid evidence” of oil sands processed (OSPW) seepage into near-field groundwater around tailings ponds. This Factual Record contains several other findings that I submit are relevant to the Commissioner’s understanding of anti-Alberta energy campaigns.

Q6. The Cooper Report suggests that certain organizations are involved in strategically funding activist organizations in Canada or organizations that are in the US but are opposed to Canadian interests. The Cooper Report may be read as suggesting that funds flow from these organizations to smaller organizations that are ideologically aligned, thus giving the appearance of a grass roots movement.

Do you agree or disagree with Dr. Cooper’s conclusion? Why? From a policy perspective, if the Cooper Report is correct on the flow of funds from foreign entities, what are your views on this claimed means of funding advocacy? Does this create any concerns regarding transparency of funding? If so, should measures be taken to enhance transparency? Are there negative consequences that would arise from enhanced transparency?

MO6: For reasons already set out, I disagree with most of Dr. Cooper’s narrative and conclusions. In terms of transparency, while I am not an expert on charities law or charitable reporting requirements, it is my understanding that this information is already disclosed or substantially disclosed. In any event, and returning to the observation I made earlier with respect to advocacy and youth (MO3), whatever recommendations are made here should not discriminate based on the perspective or message of the funding or receiving entities (*e.g.* supportive or critical of the oil and gas industry) (see also my response in MO10).

Q7. The Energy In Depth Report (at page 25) refers to the role of a law firm with registered charitable status in a letter writing campaign encouraging BC municipalities to sue a proponent of Canadian energy projects, including projects relating to the transportation of oil and gas, for climate-related damages.

What, in your view, are the advantages and disadvantages, or broader policy issues, with permitting law firms with focused objectives to have charitable status, such that their funding qualifies as charitable donations for the donors? To what extent are these advantages/disadvantages, or policy considerations, different where the funding comes from foreign sources?

MO7: I am not aware of any reason or rationale for why a charity should be treated differently from other charities simply because it employs lawyers, has legal expertise, and/or engages in law-related activities to pursue its mandate. Indeed, charities routinely hire lawyers to protect their interests and to participate in litigation that is important to their objects and purposes.

Q8. The Reports generally may be read as advancing the proposition that a small number of extremely well-endowed foundations advance the philosophy of their funders, management or boards of directors to influence public policy, and that they are less publicly accountable than politicians or industry.

Do you agree or disagree with this proposition? Why? If you agree with the proposition, do you consider it to be problematic from a policy perspective? Why? What, if any, solutions might offer a fair and proportionate mechanism to address the policy concerns you consider to exist?

MO8: I disagree with this proposition, primarily as it negates the agency of receiving entities and their staff. Moreover, concerns about relative accountability must amount to more than mere speculation.

[The next two questions were raised by the Commissioner subsequent to his November 9, 2020 correspondence and are in relation to the New York Times article by Hiroko Tabuchi, “How One Firm Drove Influence Campaigns Nationwide for Big Oil”]:

Q9. *Whether you are aware of any of the efforts/initiatives referred to in the additional Report, or similar efforts/initiatives, occurring in Alberta?*

MO9: I was not personally aware of the efforts related to Energy in Depth. I am, however, aware of similar efforts in Alberta. See:

- Carol Linnitt “[“Grassroots’ oil and gas advocacy group Canada Action received \\$100,000 from ARC Resources”](#) (Jun 24, 2020) *The Narwhal*.
- Carol Linnitt and Donald Gutstein, “[“Grassroots’ Canada Action Carries Deep Ties to Conservative Party, Oil and Gas Industry”](#) (Jul 22, 2015), *The Narwhal*.

Q10. *How, if at all, the additional Report may inform the policy questions in question 6 of my initial correspondence to you?*

MO10: The additional Report (the NY Times article by Hiroko Tabuchi) suggests that at least some members of the oil and gas industry have engaged in the very same tactics that Dr. Cooper has accused environmental organizations of engaging in. It further reinforces the biased nature of this Inquiry, which has targeted only one side of the debate over the pace and scale of oil and gas development in Alberta.

Finally, with respect to the writings of Bjorn Lomborg and Michael Shellenberger, I refer the Commissioner to the following articles that respond to some of their works and ideas, both in a general way and more specifically (including a book review of Mr. Shellenberger's book by global water policy expert Dr. Peter Gleick):

- Kelly Crowe, "[How 'organized climate change denial' shapes public opinion on global warming](#)" CBC News (Sep 27, 2019);
- Sara Hastings-Simon, "[Beware of climate delay, masquerading as climate action](#)" CBC News (Sep 10, 2020);
- Peter H. Gleick, "[Book review: Bad science and bad arguments abound in 'Apocalypse Never' by Michael Shellenberger](#)" (July 15, 2020);
- Daniel Swain et al, "[Article by Michael Shellenberger mixes accurate and inaccurate claims in support of a misleading and overly simplistic argumentation about climate change](#)" (06 Jul 2020).

Thank you for your time. Notwithstanding significant prior and on-going concerns with respect to this Inquiry, I do appreciate the opportunity to provide this commentary.

Regards,

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Appendix A: Excerpts from the GGPPA Reference Cases (SK, ON, and AB)

1. Reference re Greenhouse Gas Pollution Pricing Act, [2019 SKCA 40 \(CanLII\)](#)

[4] The factual record presented to the Court confirms that climate change caused by anthropogenic greenhouse gas [GHG] emissions is one of the great existential issues of our time. The pressing importance of limiting such emissions is accepted by all of the participants in these proceedings. ...

[14] GHGs are gases that absorb and re-emit infrared radiation. Carbon dioxide is the most recognizable GHG.

[15] The general character of the GHG phenomenon and the basic science of climate change are not contested by any of the participants in this Reference. In simplest terms, planet Earth

absorbs energy from sunlight. When that energy is emitted, GHGs capture some of it. This slows the escape of such energy into space and, over time, heats the atmosphere and the surface of the earth. These higher temperatures disrupt global climate patterns.

[16] The broad contours of the impact of anthropogenic emissions of GHGs and of the nature of the climate change issue are summarized in *Climate Change 2014 Synthesis Report Summary for Policymakers* [*Climate Change 2014*]. It was prepared by the Intergovernmental Panel on Climate Change [IPCC], which was established by the United Nations Environmental Programme and the World Meteorological Organization. The IPCC, as described by John Moffet, Assistant Deputy Minister with Environment and Climate Change Canada, in his affidavit of October 25, 2018, is “the leading world body for assessing the most recent scientific, technical, and socio-economic information produced worldwide relevant to understanding climate change, its impacts and potential future risks, and possible response options”. *Climate Change 2014* concludes as follows:

(a) “Human influence on the climate system is clear, and recent anthropogenic emissions of greenhouse gases are the highest in history. Recent climate changes have had widespread impacts on human and natural systems” (at 2).

(b) “Warming of the climate system is unequivocal, and since the 1950s, many of the observed changes are unprecedented over decades to millennia. The atmosphere and ocean have warmed, the amounts of snow and ice have diminished, and sea level has risen” (at 2).

(c) “Anthropogenic greenhouse gas emissions have increased since the pre-industrial era, driven largely by economic and population growth, and are now higher than ever. This has led to atmospheric concentrations of carbon dioxide, methane and nitrous oxide that are unprecedented in at least the last 800,000 years. Their effects, together with those of other anthropogenic drivers, have been detected throughout the climate system and are *extremely likely* to have been the dominant cause of the observed warming since the mid-20th century” (emphasis in original, at 4).

(d) “Changes in many extreme weather and climate events have been observed since about 1950. Some of these changes have been linked to human influences, including a decrease in cold temperature extremes, an increase in warm temperature extremes, an increase in extreme high sea levels and an increase in the number of heavy precipitation events in a number of regions” (at 7).

(e) “Continued emission of greenhouse gases will cause further warming and long-lasting changes in all components of the climate system, increasing the likelihood of severe, pervasive and irreversible impacts for people and ecosystems. Limiting climate change would require substantial and sustained reductions in greenhouse gas emissions which, together with adaptation, can limit climate change risks” (at 8).

(f) “Surface temperature is projected to rise over the 21st century under all assessed emission scenarios. It is *very likely* that heat waves will occur more often and last longer, and that extreme precipitation events will become more intense and frequent in many regions. The ocean will continue to warm and acidify, and global mean sea level to rise” (emphasis in original, at 10).

(g) “Climate change will amplify existing risks and create new risks for natural and human systems. Risks are unevenly distributed and are generally greater for disadvantaged people and communities in countries at all levels of development” (at 13).

(h) “Without additional mitigation efforts beyond those in place today, and even with adaptation, warming by the end of the 21st century will lead to high to very high risk of severe, widespread and irreversible impacts globally (*high confidence*). ...” (emphasis in original, at 17).

None of these conclusions were challenged or put in issue by the participants in this Reference.

[17] Climate change impacts affecting Canada and Canadians include thawing permafrost, increases in extreme weather and extreme weather events such as forest fires, degradation of soil and water resources, increased frequency and severity of heat waves, and expansion of the ranges of vector-borne diseases. Predictions show that Canada’s temperature, particularly in the Arctic, will warm at a faster rate than that of the world as a whole. See: Affidavit of John Moffet at paras 18–26.

2. Reference re Greenhouse Gas Pollution Pricing Act, [2019 ONCA 544 \(CanLII\)](#)

[6] Climate change was described in the *Paris Agreement* of 2015 as “an urgent and potentially irreversible threat to human societies and the planet”. It added that this “requires the widest possible cooperation by all countries, and their participation in an effective and appropriate international response”.

[7] There is no dispute that global climate change is taking place and that human activities are the primary cause. The combustion of fossil fuels, like coal, natural gas and oil and its derivatives, releases GHGs into the atmosphere. When incoming radiation from the Sun reaches Earth’s surface, it is absorbed and converted into heat. GHGs act like the glass roof of a greenhouse, trapping some of this heat as it radiates back into the atmosphere, causing surface temperatures to increase. Carbon dioxide (“CO₂”) is the most prevalent GHG emitted by human activities. This is why pricing for GHG emissions is referred to as carbon pricing, and why GHG emissions are typically referred to on a CO₂ equivalent basis. Other common GHGs include methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, and nitrogen trifluoride.

[8] At appropriate levels, GHGs are beneficial. They surround the planet like a blanket, keeping temperatures within limits at which humans, animals, plants and marine life can live in balance. The level of GHGs in the atmosphere was relatively stable for several million years. However, since the beginning of the industrial revolution in the 18th century, and more particularly since the 1950s, the level of GHGs in the atmosphere has been increasing at an alarming rate. Atmospheric concentrations of CO₂ are now more than 400 parts per million, a level not reached since the mid-Pliocene epoch, approximately 3-5 million years ago. Concentrations of other GHGs have also increased dramatically.

[9] As a result, the global average surface temperature has increased by approximately 1.0 degree Celsius above pre-industrial levels (i.e., prior to 1850). It is estimated that by 2040, the global average surface temperature will have increased by 1.5 degrees Celsius.

[10] Those temperature increases may seem small, but the results are not. The years 2014 to 2018 inclusive have been identified, globally, as the five hottest years ever recorded. Temperatures in Canada have been increasing at roughly double the global average rate. With the longest coastline in the world, high altitude areas where warming is amplified, and significant Arctic territory, Canada has been disproportionately impacted by global warming. In the Canadian Arctic, for instance, the rate of warming has been even higher than in southern parts of Canada, estimated at three times the global rate. It is predicted that temperatures in Canada will continue to increase at a rate greater than the rest of the world.

[11] This global warming is causing climate change and its associated impacts. The uncontested evidence before this court shows that climate change is causing or exacerbating: increased frequency and severity of extreme weather events (including droughts, floods, wildfires, and heat waves); degradation of soil and water resources; thawing of permafrost; rising sea levels; ocean acidification; decreased agricultural productivity and famine; species loss and extinction; and expansion of the ranges of life-threatening vector-borne diseases, such as Lyme disease and West Nile virus. Recent manifestations of the impacts of climate change in Canada include: major wildfires in Alberta in 2016 and in British Columbia in 2017 and 2018; and major flood events in Ontario and Québec in 2017, and in British Columbia, Ontario, Québec and New Brunswick in 2018. The recent major flooding in Ontario, Québec and New Brunswick in 2019 was likely also fueled by climate change.

[12] Climate change has had a particularly serious impact on some Indigenous communities in Canada. The impact is greater in these communities because of the traditionally close relationship between Indigenous peoples and the land and waters on which they live.

[13] For example, members of the intervener Athabasca Chipewyan First Nation (“ACFN”) – whose traditional territory extends from northeastern Alberta, northward into the Northwest Territories, and eastward to Hudson Bay – depend for their survival on hunting caribou, gathering food and medicinal plants, and trapping and fishing. The ACFN has adduced evidence that these traditional, survival-based practices are threatened by climate change. A declining barrenland caribou population, the reduction of surface water in lakes and rivers, and an increased risk of wildfires, each of which is caused or exacerbated by climate change, threaten the ACFN’s ability to maintain its traditional way of life.

[14] The intervener the United Chiefs and Councils of Mnidoo Mnising (the “UCCMM”) has also adduced evidence on the effects of climate change on its six member Nations. The traditional territories of the UCCMM Nations are primarily situated on and around Manitoulin Island and the north shore of Georgian Bay. According to the affidavit of Tribal Chair Patsy Corbiere, the UCCMM Nations’ intimate relationship with their traditional lands and waters has allowed them to observe the impacts of climate change firsthand. Over recent decades, they have noted a decrease in moose populations and native whitefish stocks, less frequent, but more intense bouts

of precipitation, shorter and thinner ice cover in the winter, and diminishing water quality due to increased green algae blooms spurred by warmer temperatures. These changes to the environment impair the UCCMM Nations' ability to sustain themselves by observing traditional practices, and threaten their continued existence as a self-determining people.

[15] Both nationally and globally, the economic and human costs of climate change are considerable. Canada's Minister of Finance has estimated that climate change will cost Canada's economy \$5 billion per year by 2020, and up to \$43 billion per year by 2050 if no action is taken to mitigate its effects. The World Health Organization has estimated that climate change is currently causing the deaths of 150,000 people worldwide each year. Rising sea levels threaten the safety and lives of tens of millions of people in vulnerable regions.

[16] The United Nations Intergovernmental Panel on Climate Change recently reported that global net anthropogenic CO₂ emissions must be reduced by approximately 45 percent below 2010 levels by 2030, and must reach "net zero" by 2050 in order to limit global average surface warming to 1.5 degrees Celsius and to avoid the significantly more deleterious impacts of climate change. "Anthropogenic" emissions are those resulting from human activities. "Net zero" CO₂ emissions are achieved when anthropogenic CO₂ emissions are balanced globally by CO₂ removed from the atmosphere over a specified period. Deep reductions in other GHG emissions will also need to occur in order to limit global average surface warming to 1.5 degrees Celsius.

[17] Of particular concern to a federal state like Canada is that the principal effect of GHG emissions – climate change – often bears no relationship to the location of the source of the emissions. Provinces and territories that have very low emissions, and are far removed geographically from the source of emissions, often experience impacts of climate change that are grossly disproportionate to their individual contributions to Canada's total GHG emissions.

[18] In 2016, for example, Canada's total GHG emissions, measured in tonnes of CO₂ equivalent, were 704 megatonnes (1 megatonne is equal to 1,000,000 tonnes, and 1 tonne is equal to 1,000 kilograms). The individual provincial and territorial totals were as follows (Record of Canada, Vol. 3, p. 979):

NL	10.8
PE	1.8
NS	15.6
NB	15.3
QC	77.3
ON	160.6
MB	20.9

SK	76.3
AB	262.9
BC	60.1
YT	0.4
NT	1.6
NU	0.7
Total	704

[19] As this chart demonstrates, in 2016, the three territories collectively contributed 2.7 megatonnes or approximately 0.4 percent of Canada’s total GHG emissions. The four Atlantic provinces contributed 43.5 megatonnes or approximately 6.2 percent of Canada’s emissions. Yet these regions will experience the effects of climate change caused by Canada’s total emissions – the destruction of permafrost, the loss of ice cover and rising sea levels in particular – in a manner that is out of proportion to their regions’ contributions to atmospheric levels of GHGs.

[20] Moreover, as a practical matter and indeed as a legislative matter, there is nothing these provinces and territories can do to address the emission of GHGs by their geographic neighbours and constitutional partners. Without a collective national response, all they can do is prepare for the worst.

[21] Of course, the problem of climate change caused by GHG emissions is not unique to these provinces and territories. The entire country experiences the effects of climate change and every province and territory is affected by the failure of others to reduce their own GHG emissions. Indeed, the international community has recognized that the solution to climate change is not within the capacity of any one country and has, therefore, sought to address the issue through global cooperation, a topic addressed in the next section.

3. *Reference re Greenhouse Gas Pollution Pricing Act*, [2020 ABCA 74](#)

[1] Calls to action to save the planet we all share evoke strong emotions. And properly so. *The dangers of climate change are undoubted as are the risks flowing from failure to meet the essential challenge. Equally, it is undisputed that greenhouse gas emissions caused by people (GHG emissions) are a cause of climate change. None of these forces have passed judges by.* The question the Lieutenant Governor in Council referred to this Court though – is the *Greenhouse Gas Pollution Pricing Act*, SC 2018, c 12 (*Act*) unconstitutional in whole or in part – is not a referendum on the phenomenon of climate change. Nor is it about the undisputed need for governments throughout the world to move quickly to reduce GHG emissions, including through changes in

societal behaviour. The federal government is not the only government in this country committed to immediate action to meet this compelling need. Without exception, every provincial government is too.

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