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Open Access: A Request to the Alberta Court of Appeal

By: Admin

Matter Commented On: *Reference re Greenhouse Gas Pollution Pricing Act (Alberta)*

There is considerable public interest in questions as to the validity of the federal *Greenhouse Gas Pollution Pricing Act*, [SC 2018, c 12](#), s 186 (*GGPPA*) and the References that have been made to different provincial Courts of Appeal. We now have judgments rendered by both the Saskatchewan and Ontario Courts of Appeal upholding the federal government's GHG pricing regime: *Reference re Greenhouse Gas Pollution Pricing Act*, [2019 SKCA 40 \(CanLII\)](#) and *Reference re Greenhouse Gas Pollution Pricing Act*, [2019 ONCA 544 \(CanLII\)](#). Appeals are pending in each of these cases.

It is now Alberta's turn. The [Reference question posed by the Government of Alberta](#) is short and all-embracing:

Is the Greenhouse Gas Pollution Pricing Act (Canada) unconstitutional in whole or in part?

In response to the significant public interest in the matter, both the Saskatchewan and Ontario Courts of Appeal decided to make all of the facts in their Reference cases readily available on their websites. The Saskatchewan materials are available [here](#) and the Ontario materials are available [here](#).

In addition to meeting the interests of the general public, the pleadings also proved to be a useful teaching tool for several colleagues at the law school in a number of different courses during the winter term.

In putting up this post we respectfully request that Alberta's Court of Appeal consider following the example of the Saskatchewan and Ontario Courts. The Alberta Court of Appeal has just published its first procedural ruling in this matter on CanLII ([2019 ABCA 283 \(CanLII\)](#)) and this is therefore an appropriate time to make this request. As Justice Slatter himself observed in *Robertson v Edmonton (City) Police Service (#8)*, [2004 ABQB 242 \(CanLII\)](#):

[T]he openness of court documents is as important as the openness of the court itself: *Edmonton Journal v. Alberta (Attorney-General)*, [1989 CanLII 20 \(SCC\)](#), [1989] 2 S.C.R. 1326 at pg. 1340. It is often difficult to follow the arguments in court without access to the documents that are being referred to. Decisions rendered by the court are based not only on the oral portion of the hearing, but also the written material filed on the record. In many cases where written reasons are not given it would be difficult to understand the reasoning behind the judicial decision without having access to the documents. (at para 18)

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