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Going Through the Motions to Trigger the Sovereignty Act: Another Paper Tiger?

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Matters Commented On: (1) Motion re the draft federal Clean Electricity Regulation, oral notice given, November 27, 2023, adopted by recorded vote on February 28, 2024, (2) Motion re proposed federal Oil and Gas Sector Greenhouse Gas Emissions Cap Regulations, debated and adopted December 2, 2024 and (3) Proposed Oil and Gas Sector Greenhouse Gas Emissions Cap Regulations, 158 (45) Canada Gazette, Part 1, November 9, 2024 and accompanying regulatory impact analysis statement.

This post assesses the second motion tabled pursuant to the *Alberta Sovereignty Within a United Canada Act* SA 2022, c A 33.8 (*Sovereignty Act* or the Act). The first motion was with respect to the draft federal Clean Electricity Regulation (the CER Motion), adopted on February 28, 2024. The second motion relates to the proposed federal Oil and Gas Sector Greenhouse Gas Emissions Cap Regulations (the Emissions Cap Motion), debated and adopted December 2, 2024. Our focus is on the Emissions Cap Motion simply because it is the most current (but we also note that, ten months later, there do not appear to be any relevant developments in relation to the CER Motion – at least none that are publicly available and certainly none that take the form of implementing regulations under the *Sovereignty Act*).

Our post proceeds as follows. The next part provides some background on the *Sovereignty Act*. This is followed by an explanation of the Act's basic mechanics, and a quick primer on the doctrine of federal paramountcy. We then assess the Emissions Cap Motion, including the government's proposed responses, against the requirements of the Act and the relevant constitutional rules, especially paramountcy. As further set out below, it is doubtful that the *Sovereignty Act* adds anything meaningful to the province's ability to resist valid federal laws or policies that it doesn't like. To the contrary, to the extent that any *Sovereignty Act*-based measure would be fundamentally and explicitly about opposing a federal statute or regulation (its "pith and substance"), then the *Sovereignty Act* appears to be self-defeating. Such measures are either *ultra vires* the province, there being no provincial legislative authority to sustain them, or inapplicable to the extent that they conflict with or frustrate a valid federal statute or regulation by virtue of the doctrine of paramountcy. Neither is there a provincial disallowance power, which the Premier actually acknowledged when introducing the Emissions Cap Motion in the Legislature (even while mislabelling it as "dissolution"):

> The Constitution is written in a way that gives the federal government the power of what they call dissolution. So if the provinces pass legislation in federal areas of jurisdiction, they have the ability to say: you can't do that. I think it's been an unfortunate factor that we haven't had an equivalent power, and I can tell you that

> I'm talking with my provincial counterparts on whether we ought to try to have a constitutional amendment to do exactly that. (Hansard, December 2, 2024 at 2248.)

We also note that the federal government has not exercised its power of disallowance of a provincial law since 1943 (See GV La Forest, Disallowance and reservation of provincial legislation (1955)) and most commentators consider it to be politically if not legally dead. Hence, the suggestion of creating a new provincial disallowance power is, we suggest, a political non-starter and absurd.

Background on the *Sovereignty Act*

We have previously posted on the original version of the *Sovereignty Act* and on the slightly revised text before it was passed (here). Our summary conclusions in relation to the Bill as originally introduced were that it was vulnerable to constitutional attack for three reasons:

> First, it is vulnerable because it represents a direct attack on the separation of powers insofar as it authorizes the legislature to trespass upon the exclusive authority of section 96 courts to make legally significant determinations as to the constitutional validity of federal laws and other initiatives. Second, it is vulnerable on division of powers grounds insofar as Bill 1, at its core, is directed at assessing the validity of federal legislation. If that part of the Bill is removed there is nothing left. And third, the Henry VIII provisions of Bill 1 [a Henry VIII provision is a provision that purports to give cabinet the authority to override an act of the legislature] are vulnerable insofar as the Henry VIII clauses in Bill 1 have the potential to sweep across the entire statute book.

The Smith government did introduce amendments to the Bill, including deletion of the Henry VIII clause, before it was passed in that revised form. Our summary conclusion in relation to the revised Bill was that the "amendments to Bill 1 address the main concerns associated with the breadth of the Henry VIII provisions (although we observe that cabinet will still have massive powers in relation to delegated legislation adopted under other enactments). The amendments do not address the separation of power issues or the division of powers issues that we identified in our initial post."

We continue to think that these conclusions are sound, even while acknowledging the Supreme Court of Canada's recent observations in *Reference re An Act respecting First Nations, Inuit and Métis children, youth and families*, 2024 SCC 5 (CanLII) as to the permissibility of Parliament and the legislatures affirming their understanding of their constitutional obligations in legislation (at para 110). We acknowledge that this ruling permits more overlap between the legislative and judicial branches than we would have expected but – and at the risk of stating the obvious – it is one thing for one level of government to *affirm* its understanding of its *own* legal obligations in legislation; quite another for it to *sit in judgment* with respect to the constitutionality of *another* level's legislation. In either case, of course, "it is for the courts to interpret the Constitution where a case so requires" (ibid).

But we will not go over that ground here. For present purposes we will assume the validity of the *Sovereignty Act*. Our objective in this post is to consider the merits – if any – of the two motions that have been tabled with the intent of triggering the discretionary powers embedded in the Act. To that end, we will also assume here that the target federal regulations at issue (both just drafts at this stage but eventually to be promulgated under the authority of the federal *Canadian Environmental Protection Act, 1999*, SC 1999, c 33 (*CEPA, 1999*)), will prove to be valid exercises of federal power (i.e. we assume that they will be constitutional). We recognize that this assumption will be contested by some (for the most relevant precedent, see *Syncrude Canada Ltd. v Canada (Attorney General)*, 2016 FCA 160 (CanLII) and ABlawg commentary here, here, here, and here), but we make the assumption for a simple logical reason: if the regulations are *invalid* (and in each case the Smith government clearly plans to test the validity of the federal regulations – once they are promulgated – by way of references to the Alberta Court of Appeal), then the Smith government doesn't need the *Sovereignty Act* or any implementing executive action to create or affirm an Alberta firewall.

A Primer on the Mechanics of the *Sovereignty Act*

The CER Motion and the Emissions Cap Motion are necessary because ss 3 and 4 of the *Sovereignty Act* make it clear that such a motion is a condition precedent to triggering the extensive executive powers, including regulation-making powers, of the Lieutenant Governor in Council (cabinet) set out in section 4 of the Act:

> 3 *If*, on a motion of a member of Executive Council, the Legislative Assembly approves a resolution that
>
> (a) states that the resolution is made in accordance with this Act,
>
> (b) states that, in the opinion of the Legislative Assembly, a federal initiative
>
> (i) is unconstitutional on the basis that it
>
> (A) intrudes into an area of provincial legislative jurisdiction under the Constitution of Canada, or
>
> (B) violates the rights and freedoms of one or more Albertans under the *Canadian Charter of Rights and Freedoms*,
>
> *or*
>
> (ii) causes or is anticipated to cause harm to Albertans on the basis that it
>
> (A) affects or interferes with an area of provincial legislative jurisdiction under the Constitution of Canada, or
>
> (B) interferes with the rights and freedoms of one or more Albertans under the *Canadian Charter of Rights and Freedoms*,
>
> (c) sets out the nature of the harm, if the resolution states that, in the opinion of the Legislative Assembly, a federal initiative causes or is anticipated to cause harm to Albertans, and
>
> (d) identifies a measure or measures that the Lieutenant Governor in Council should consider taking in respect of the federal initiative,

> the Lieutenant Governor in Council may take the actions described in section 4. (Emphasis added)

The conditional "if" at the opening of s 3 confirms that the executive powers enshrined in s 4 can only be triggered by way of a motion and resolution that meets the manner and form requirements set out in s 3. These requirements are: First, the motion and resolution must indicate that it is a *Sovereignty Act* motion/resolution; Second, the motion and resolution must identify a federal initiative that is either unconstitutional *or* will cause harm on the basis of constitutional-like effects (that's the best we can do with the text of s 3(b)(ii)) – We refer to the former as the constitutionality trigger and the latter as the harm trigger; Third, the motion and resolution must set out the nature of the alleged harm – but only if that is the basis of the motion and resolution; And fourth, the motion and resolution should identify the measures that cabinet might take "in respect of the federal initiative." In sum, the Act establishes three (and in some cases four) manner and form requirements that any motion and resolution must fulfill.

Armed with a resolution that meets these manner and form requirements, the Lieutenant Governor in Council may exercise the full suite of executive powers referenced in s 4 as follows:

> 4(1) If the Legislative Assembly approves a resolution described in section 3, the Lieutenant Governor in Council, to the extent that it is necessary or advisable in order to carry out a measure that is identified in the resolution, may, by order,
>
> (a) if the Lieutenant Governor in Council is satisfied that doing so is in the public interest, direct a Minister responsible for an enactment as designated under section 16 of the Government Organization Act to, by order,
>
> (i) suspend or modify the application or operation of all or part of a regulation authorized by that enactment, subject to the terms and conditions that the Lieutenant Governor in Council may prescribe, or
>
> (ii) specify or set out provisions that apply in addition to, or instead of, any provision in a regulation authorized by that enactment, subject to the approval of the Lieutenant Governor in Council,
>
> (b) direct a Minister to exercise a power, duty or function of the Minister, or
>
> (c) issue directives to a provincial entity and its members, officers and agents, and the Crown and its Ministers and agents, in respect of the federal initiative.

A Primer on the Doctrine of Federal Paramountcy

One of the significant challenges that Alberta will face in exercising the executive powers listed in s 4 is the doctrine of federal paramountcy. Accordingly, it is useful to provide a primer on this doctrine before we examine the terms of the Emissions Cap Motion. The Supreme Court of Canada set out the current test for paramountcy in *Canadian Western Bank v Alberta*, 2007 SCC 22 (CanLII), [2007] 2 SCR 3 and re-affirmed it in *Alberta (Attorney General) v Moloney,* 2015 SCC 51 (CanLII), [2015] 3 SCR 327. In *Western Bank*, the Supreme Court noted that paramountcy "recognizes that where laws of the federal and provincial levels come into conflict, there must be a rule to resolve the impasse" (at para 32). To determine whether such conflict exists, one of us has previously summarized the relevant framework from the *Moloney* decision – in the context of

British Columbia's attempts to thwart the Trans Mountain pipeline expansion – as follows (citations omitted):

> 1. "First and foremost, it is necessary to ensure that the overlapping federal and provincial laws are independently valid… This means determining the pith and substance of the impugned provisions by looking at their purpose and effect… If the legislation of one level of government is invalid, no conflict can ever arise, which puts an end to the inquiry…"
>
> 2. If both are valid, a "conflict is said to arise in one of two situations, which form the two branches of the paramountcy test: (1) there is an operational conflict because it is impossible to comply with both laws, or (2) although it is possible to comply with both laws, the operation of the provincial law frustrates the purpose of the federal enactment."
>
> 3. With respect to the first branch, "there would seem to be no good reasons 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'…"
>
> 4. If there is no conflict under the first branch of the test, one may still be found where "the effect of the provincial law may frustrate the purpose of the federal law, even though it does 'not entail a direct violation of the federal law's provisions.'" Previous jurisprudence "assists in identifying typical situations where overlapping legislation will not lead to a conflict. For instance, duplicative federal and provincial provisions will generally not conflict… Nor will a conflict arise where a provincial law is more restrictive than a federal law… The application of a more restrictive provincial law may, however, frustrate the federal purpose if the federal law, instead of being merely permissive, provides for a positive entitlement…"
>
> (*Moloney*, at paras 22-29, as summarized in Martin Z. Olszynski, "Testing the Jurisdictional Waters: The Provincial Regulation of Interprovincial Pipelines" (2018) 23:1 Rev Const Stud at 95 – 96.)

In addition to our doubts regarding the constitutionality of the *Sovereignty Act* itself, we suspect that many of Alberta's proposed "responses" under the Emissions Cap Motion would also not pass the first step (i.e. are not themselves valid), because they will be in "pith and substance" about opposing a federal law or regulation, and we are unaware of any provincial head of power that would support such measures. While Premier Smith has speculated that the *Sovereignty Act* might serve as some sort of "notwithstanding clause" (at 00.25) (and see Don Braid, Calgary Herald, November 4, 2024) there is no such clause in the division of powers provisions of our constitution.

Nevertheless, and despite our doubts as to the validity of the entire *Sovereignty Act* scheme, we also consider the subsequent steps in the analysis.

The Emissions Cap Motion

With respect to manner and form considerations, the relevant parts of the Emissions Cap motion are as follows (we omit paragraphs (d) to (g)):

> Be it resolved that the Legislative Assembly approve, pursuant to section 3 of the Alberta Sovereignty Within a United Canada Act, the following motion:
>
> 1. The Legislative Assembly is of the view that
>
> > (a) in accordance with section 92A of The Constitution Act, 1867, the Alberta Legislature has exclusive legislative jurisdiction over the exploration, development, conservation, management and production of non-renewable natural resources in Alberta,
> > (b) the Government of Canada has proposed the Oil and Gas Sector Greenhouse Gas Emissions Cap Regulations ("Federal Initiative"), which would, if implemented, cap oil and gas production in Alberta, result in a production cut of at least one million barrels of oil per day and effectively prohibit future oil and gas production growth in Alberta,
> > (c) the Federal Initiative will damage the economic and social well-being of Albertans by eliminating hundreds of thousands of jobs, cause the insolvency of tens of thousands of Alberta businesses, and lead to the loss of hundreds of billions of dollars in tax and royalty revenue by the Government of Alberta to support public social programs and infrastructure for Albertans,
> > …
>
> 2. The Legislative Assembly is of the opinion that the Federal Initiative is unconstitutional on the basis that it is not directed at a matter falling within section 91 of The Constitution Act, 1867, and impermissibly intrudes into an area of exclusive provincial jurisdiction, namely the exploration, development, conservation, management, and production of non-renewable natural resources as set out in section 92A of The Constitution Act, 1867.

As noted above, s 3 in the Act establishes three and in some cases four manner and form requirements. The preamble to the motion and resolution meets the first manner and form requirement since it identifies itself a *Sovereignty Act* motion. Section 2 of the Emissions Cap Motion satisfies the second requirement since it identifies the federal initiative as unconstitutional (the constitutionality trigger). We don't have to agree with that assessment; it is enough for manner and form purposes that the motion and resolution make that claim and they do. This alone is enough to meet the second requirement. The motion and resolution also refer to harm (the harm trigger) (s 1(c)) although the text does not connect this to what we have referred to as "constitutional-like effects" – but we conclude that that is not problematic since the motion and resolution need only satisfy one or the other element (i.e. the constitutional trigger or the harm trigger) of the second manner and form requirement and it does.

Section 1(c) is relevant to the third requirement in s 3 of the Act, but as we have seen, the third requirement is only necessary if the motion and resolution rely in the alternative on harm rather than non-constitutionality (the two appear to be alternative ("or") characterizations rather than cumulative/both).

The fourth requirement is the identification of possible "measures" that cabinet might take "in respect of the federal initiative" – presumably informed by the constitutionality (or harm, but only in the alternative) considerations identified above.

On this point, the Emissions Cap Motion identifies a number of "responses" (not "measures") that cabinet might take within the meaning of s 4 of the *Sovereignty Act* (the Clean Electricity Motion has an even longer list) including, but not limited to, regulation-making powers understanding that any such regulation-making powers may be reviewed by a court on the standard of "reasonableness," and that that analysis will be informed by the requirements of both sections 4 and 5 of the *Sovereignty Act* and indeed the entire structure of the legislation: see *TransAlta Generation Partnership v Alberta*, 2024 SCC 37 (CanLII) and *Auer v Auer*, 2024 SCC 36 (CanLII).

We now turn to examine each of these seven responses in turn. Is the added authority of the *Sovereignty Act* necessary to exercise the powers listed in section 4, and how effective would any such measures or responses be in counteracting the alleged federal overreach?

(a) ensure that the Government of Alberta and any provincial entity, as defined in the *Alberta Sovereignty Within a United Canada Act*, refrain from participating in the implementation or enforcement of the Federal Initiative within Alberta, to the extent legally permissible;

While there is actually a long record of federal, provincial, and territorial cooperation in environmental matters, we expect that the proposed oil and gas GHG emissions cap will apply directly to regulated entities and will not require any provincial participation or assistance. Our review of the Draft Regulations confirms this. The Regulations principally impose obligations on "operators" defined as "the person that has the charge, management or control of a facility at which industrial activities are carried out." It is unlikely that such a person will be the government or a "provincial entity" notwithstanding the broad definition of that term in the *Sovereignty Act*. Consequently, we conclude that this proposed 'response' will prove to be a dead letter.

(b) use all legal means necessary to oppose the implementation or enforcement of the Federal Initiative in Alberta, including launching a legal challenge in the Alberta Courts;

There are two elements to this clause. First there is a general injunction to consider "all legal means" and second, there is the possibility of a legal challenge. With respect to the first, given our views above as to the absence of provincial legislative authority to make laws for the express purpose of "oppos[ing] the implementation or enforcement" of otherwise valid federal laws it is hard to imagine a constitutionally valid implementation of this provision. As to the second, the more specific possibility of instituting a legal challenge is certainly viable but such a challenge does not require sanction under the *Sovereignty Act* or regulations under the Act. There is already authority to direct a reference to the Court of Appeal under s 26 of the *Judicature Act*, RSA 2000, c J-2; indeed it's an authority that Alberta has frequently used in the last few years, most recently (November 20, 2024) in relation to revised federal *Impact Assessment Act*.

(c) ensure that oil and gas production facilities and related infrastructure that are owned by an interest holder in Alberta ("interest holder facilities") are considered to be "essential infrastructure", as defined in the Critical Infrastructure Defence Act;

This direction requires some unpacking. The motion and resolution define "interest holder" as a person holding a Crown-granted mineral interest, and the term "interest holder facilities" must therefore be similarly limited, i.e. neither term applies to non-Crown mineral interests and facilities. It is not clear why the Smith government chose not to include all mineral interests, including interests in freehold minerals, since all will be subject to the cap. However, the *Critical Infrastructure Defence Act*, SA 2020, c C-32.7 (*CIDA*), already includes the following in its definition of "critical infrastructure:

(i) a controlled area, installation, manufacturing plant, marketing plant, pipeline, processing plant, refinery, road or road allowance as defined in the *Pipeline Act*;
(ii) a heavy oil site, mine, oil production site, oil sands site,
(viii) a facility as defined in the *Oil and Gas Conservation Act*

These are already broad definitions that could readily be expanded with or without the *Sovereignty Act*: s 5 of *CIDA* allows the Lieutenant Governor in Council to "make regulations prescribing buildings, structures, devices or other things as being essential infrastructure." That said, s 4(1)(a) and (b) of the *Sovereignty Act* specifically contemplate that regulation passed under the authority of the *Sovereignty Act* can expand, contract or modify the scope of other regulation-making powers. We can only speculate but, bearing in mind item (d) below, this appears be an attempt to buttress the lawfulness of the power to prescribe beyond that contemplated by *CIDA*.

(d) prohibit the entry by any individual, including an employee or contractor of the Government of Canada, to an interest holder facility, excepting the interest holder and their employees and contractors, or anyone else specifically authorized to enter that interest holder facility by the Government of Alberta;

Section 2(1) of *CIDA* already provides that "No person shall, without lawful right, justification or excuse, wilfully enter on any essential infrastructure." It follows that much of the ground of this direction is already covered by existing law except that the new direction does not contain the "without lawful right, justification or excuse" language of *CIDA*. Thus, the question for present purposes is whether the province could make such a regulation and apply the resulting absolute prohibition on entry against an employee or contractor of the Government of Canada? The answer must be no, at least where federal legislation of general application creates a right of entry as an incidental part of the administration and enforcement of that federal law. Infrastructure in the province (whether designated as essential or not) is not immune from the application of federal law and a regulation passed under the terms of the *Sovereignty Act* cannot create such an immunity.

For example, there are broad powers of inspection under s 218 of *CEPA, 1999,* and, on the premise that the proposed federal emissions cap regulation (and even if only the collection of emissions data under existing rules; see section 46) is valid, such a power of inspection would be opposable against any covered facility. Returning to the paramountcy framework discussed above, if explicitly directed at federal officials, any such regulation would likely be *ultra vires*. Conversely,

if such a regulation were drafted in more general terms to try to safeguard its constitutional validity, it would be inoperative with respect to federal officials, most likely under the first branch of the paramountcy rules (a direct operational conflict).

(e) declare that all information or data related directly or indirectly to greenhouse gas emissions that are collected by interest holders at an interest holder facility ("Emissions Data") are proprietary information and data that are owned exclusively by the Government of Alberta, and require all emissions data to be reported or disclosed by an interest holder only to the Government of Alberta;

In the abstract, it seems likely that a provincial regulation deeming certain information as proprietary and deeming it to be owned by the government of Alberta could be a valid exercise of the province's legislative authority in relation to property and civil rights. It may be unwise to exercise such a power of expropriation but that is not the issue. There may also be questions as to whether such an expropriation could be effected by a mere regulation, but putting those questions to one side, such a deeming could not relieve an operator of a duty to report emissions data under a federal statute for much the same reasons as articulated in the last section. The property of a province (whether held conventionally or as a result of deeming) has no general immunity from valid federal statutes (*Reference re Waters and Water-Powers*, 1929 CanLII 72 (SCC) at 219). The only express immunity that the Constitution recognizes is the immunity of Crown property *from taxation* by another order of government under s 125 of the *Constitution Act, 1867*. A reporting requirement is not a tax measure. And in this case, large emitters (more than 10,000 tonnes CO_2e) are already subject to reporting requirements under s 46(1) of *CEPA*, *1999* and have been since 2012. A scenario in which the federal government compels disclosure while a provincial government prohibits such disclosure is another example of operational conflict which is resolved by the application of the paramountcy rule (see above) such that the provincial prohibition will be inoperative to the extent of such conflict.

(f) use the Conventional Oil Royalty-in-Kind (CORIK) program to sell oil through the Alberta Petroleum Marketing Commission to purchasers around the world, work collaboratively with industry to expand the Bitumen Royalty-in-Kind (BRIK) program and develop a similar natural gas royalty-in-kind program, to ensure the Government and industry can maximize the value of Alberta's oil and gas resources, expand pipeline capacity, develop new markets for industry and minimize economic risk to future oil and gas resource development caused by the hostile policies of the Government of Canada;

This direction may also require some unpacking. As the direction itself notes, the province has the power to take its royalty share of production in kind. This power is based on s 33 of the *Mines and Minerals Act*, RSA 2000, c M-17 (*MMA*) and is implemented through various regulations passed under the authority of s 36(1) of the *MMA*. Hence, it is hard to see why there is any need for a specific direction to cabinet to develop *Sovereignty Act* implementing regulations under the authority of that Act when there is already adequate authority under the *MMA*. But perhaps even more to the point, it is hard to see the connection between the Crown's right to take its royalty in kind and an emissions cap. We can imagine scenarios in which the Crown seeks to take in kind in order to benefit from the immunity on taxation referenced in the preceding discussion re: response (e), but the Emission Cap Regulation is not, to say it again, a tax measure.

> **(g)** work collaboratively with the governments of the United States of America, British Columbia, Saskatchewan, Manitoba, Ontario, Northwest Territories, and Yukon, as well as First Nation governments located in those jurisdictions and in Alberta, to substantially increase pipeline capacity from Alberta to tidewater ports and to the United States of America.

This final measure or directive contemplates that cabinet will work collaboratively (itself or through others) with other listed governments to increase pipeline capacity to tidewater ports. Absent from the listed governments are the federal governments, the governments of individual states in the US and provincial governments in central Canada and the Maritimes. The latter omission suggest that the current government may have given up on Energy East even while there may be interest in reviving the Keystone expansion project (KXL). The bigger puzzle however is why the Premier considered it necessary to include such a direction in the motion and resolution. This is nothing more or less than a statement of the current government's policy; it could just as easily (and with the same legal effect) have been included in a press release.

Conclusion

Whether one prefers the idiom of the paper tiger or Macbeth's "it is a tale told by an idiot, full of sound and fury, signifying nothing" (Act V, scene 5), both seem equally apt descriptors of the exercise of passing motions under the terms of the *Sovereignty Act*. Such motions, even when implemented, can do nothing to better the legal position of the province when faced with federal statutes and regulations with which it does not agree. This is indeed political theatre.

We are equally struck by the emptiness of the terms of the motion and resolution. In many cases, the government can take the actions contemplated in the relevant motion and resolution without any new powers. We say this for two reasons. First, some of the directions (especially paragraph (f)) do not create rights and obligations for others; they are more in the nature of policy statements which do not require new regulations. Second, there is sufficient existing authority under current statutes and regulations to implement other elements of the listed directives, such as under the authority of the *MMA*.

Finally, in those few instances where additional authority may be required (e.g., to deem certain information to be the property of the government of Alberta and to create prohibitions on sharing), the actual exercise of such authority seems doomed to failure. This is because, even if we assume the validity of such measures, they will be rendered inoperative pursuant to the doctrine of federal paramountcy where they conflict with the reporting and right of entry provisions found in valid federal laws.

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