Docket: 2025-404(GGPPA)G

BETWEEN:

THE GOVERNMENT OF SASKATCHEWAN,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Motion heard on November 20, 2025 at Edmonton, Alberta

Before: The Honourable Justice David E. Graham

Appearances:

Counsel for the Appellant:	David Jacyk Theodore Stathakos Simone Penney
Counsel for the Respondent:	Justine Malone Gabriel Caron Ryan R. Hall

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ORDER

THE COURT ORDERS THAT:

1. The Respondent's motion to strike is allowed. The following portions of the Notice of Appeal are struck:

   (a) paragraphs 3, 4, 6, 24, 26, 28 to 50, 60 to 63, 64(iv), 68 to 78, 90 to 94, 97(ii), 97(v) and 97(vi);

   (b) the phrase "(or Penalties)" in paragraph 64(vi);

(c) the phrase “100,” in paragraph 66;

(d) the headings above paragraphs 28 and 93; and

(e) the phrase “and penalties” in paragraph 97(vii).

2. The Appellant may file and serve an Amended Notice of Appeal on or before January 9, 2026 in order to add the pleadings described in paragraphs 40 and 46 of the Reasons for Order and remove the pleadings that I have struck.

3. The Respondent may file and serve an Amended Reply to the Amended Notice of Appeal on or before March 13, 2026.

4. Costs are awarded to the Respondent. The parties shall have until January 9, 2026 to reach an agreement on costs, failing which the Respondent shall have until February 6, 2026 to serve and file written submissions on costs and the Appellant shall have until February 20, 2026 to serve and file a written response. Any such submissions shall not exceed 10 pages in length. If the parties do not advise the Court that they have reached an agreement and no submissions are received within the foregoing time limits, costs shall be awarded to the Respondent as set out in the Tariff.

Signed this 27th day of November 2025.

“David E. Graham”

Graham J.

Citation: 2025 TCC 181
Date: 20251127
Docket: 2025-404(GGPPA)G

BETWEEN:

THE GOVERNMENT OF SASKATCHEWAN,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR ORDER

Graham J.

[1] The *Greenhouse Gas Pollution Pricing Act* (the "Act") and the *Fuel Charge Regulations* (the "Regulations") came into force in 2018. They applied a fuel charge (colloquially known as a "carbon tax") to sales of fuel made in provinces that the Governor in Council determined did not have a sufficiently stringent greenhouse gas pricing mechanism. Saskatchewan was one of those provinces.

[2] The Appellant and others challenged the constitutionality of the Act. The Supreme Court of Canada held that the Act was constitutional (*References re Greenhouse Gas Pollution Pricing Act* (2021 SCC 11)).

[3] In late 2023, the federal government announced that it would exempt light fuel oil used to heat homes from the application of the Act. It did so through the *Regulations Amending the Fuel Charge Regulations, No. 2* (the "Amending Regulations").

[4] The Appellant took the position that the government had amended the Regulations for purely political purposes and, consequently, had rendered the application of the Act to any form of fuel used for home heating unconstitutional.

As a result, the Appellant refused to remit any fuel charges in respect of its supplies of natural gas for home heating purposes. The Appellant continued to remit fuel charges in respect of its other supplies of natural gas.

[5] The Minister of National Revenue disagreed with the Appellant's approach. The Minister assessed the Appellant on the basis that the Appellant had failed to collect and remit approximately $71,000,000 in fuel charges.

[6] The Appellant has appealed those assessments.

A. Motion to Strike

[7] The Respondent has brought a motion to strike various paragraphs of the Appellant's Notice of Appeal under section 53(1) of the *Tax Court of Canada Rules (General Procedure)* on the grounds that they disclose no reasonable cause of appeal. A copy of the Notice of Appeal is attached as Schedule "A".

[8] Broadly speaking, the disputed paragraphs fall into three categories:

a. whether the application of a fuel charge to natural gas used to heat homes is unconstitutional;

b. interjurisdictional and Crown immunity; and

c. the Minister's attempts to collect the fuel charges from the Appellant.

[9] I will deal with each category separately.

B. Constitutionality

[10] In *Reference re Greenhouse Gas*, in order to determine the Act's constitutionality, the Supreme Court of Canada had to identify its true subject. Writing for the majority, Chief Justice Wagner concluded that the Act "sets minimum national standards of greenhouse gas price stringency to reduce greenhouse gas emissions".[1]

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[1] At para. 4.

[11] The Amending Regulations amended the Regulations by carving out light fuel oil used to heat homes while still applying a fuel charge to other forms of home heating fuel. The Appellant's primary argument is that the result runs directly contrary to the idea of a minimum national standard and is therefore unconstitutional.

[12] The Appellant relies heavily on the dissenting decision of Justice Rowe in *Reference re Greenhouse Gas*. Justice Rowe identified that the Act "confers exceptionally broad authority on the Governor in Council to create policy in the regulations".[2] Justice Rowe observed that the Regulations were not before the Court and might be challenged in future cases. He was concerned that "the potential for 'playing favourites' for reasons that have nothing to do with establishing minimum national standards of price stringency to reduce GHG emissions is obvious."[3] He concluded that, if the Governor in Council used the Regulations to play favourites "[s]uch regulations would be unconstitutional, even though the provisions that facially empower them are valid."[4]

[13] Chief Justice Wagner addressed Justice Rowe's concerns at the end of the reasons for the majority. He stated that Justice Rowe's premise "that regulations made pursuant to an enabling statute must be consistent with the division of powers and further the purpose of the statute" was uncontroversial.[5]

[14] For the Court to strike a paragraph from a notice of appeal, it must be plain and obvious that the paragraph discloses no reasonable grounds for appeal (*Knight v. Imperial Tobacco Canada Ltd.*[6]).

[15] The Appellant argues that, since both Justice Rowe and the majority recognized the possibility that future regulations could be unconstitutional, it cannot be plain and obvious that a constitutional argument would fail. I agree. But the Respondent is not arguing that it is plain and obvious that the argument would fail.

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2 *Reference re Greenhouse Gas*, at para. 595.

3 At para. 609.

4 At para. 609.

5 *Reference re Greenhouse Gas*, at para 220. Justice Rowe went on to propose a methodology for dealing with constitutional challenges to the regulations. The majority declined to comment on Justice Rowe's proposed methodology, preferring instead to "leave the matter of the validity of regulations under the [Act] for a future case".

6 2011 SCC 42, at para. 17.

The Respondent is arguing that it is plain and obvious that this Court does not have jurisdiction to hear the argument in the first place. The Respondent takes this position for four reasons.

Tax Court's Ability to Determine Constitutional Issue

[16] First, the Respondent strenuously argues that any attack on the *vires* of a regulation must be brought by way of judicial review in the Federal Court. The Respondent says that the Tax Court does not have jurisdiction to hear such challenges. The Appellant firmly opposes this position.

[17] Given my conclusions on the Respondent's other two reasons, I do not need to dwell on this issue. I would simply say that I do not find it plain and obvious that the Tax Court lacks such jurisdiction.

[18] Section 19.2 of the *Tax Court of Canada Act* and decisions of the Federal Court of Appeal in *Domtar v. The Queen*[7] and *Hunt v. The Queen*[8] indicate that, in the course of determining the correctness or validity of an assessment, the Tax Court has jurisdiction to determine the constitutional validity, applicability or operability of any act of Parliament or its regulations. Similarly, the Federal Court of Appeal's decision in *BCS Group Business Services Inc. v. The Queen* makes it clear that the Tax Court has the jurisdiction to find regulations enacted by the Governor in Council to be *ultra vires*.[9]

[19] The Respondent relies heavily on the Supreme Court of Canada's decision in *Dow Chemical Canada ULC v. The King*.[10] That case distinguishes between the correctness of assessments and discretionary decisions of the Minister. It is far from plain and obvious to me that the Governor in Council's decision to issue the Amending Regulations is the type of discretionary Ministerial decision that the Supreme Court was addressing in *Dow*.

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7 2009 FCA 218, at para. 38.
8 2020 FCA 118.
9 2020 FCA 205. In that case the regulations in question were the *Tax Court of Canada Rules (General Procedure)*.
10 2024 SCC 24.

[20] Had this been the only reason that the Respondent raised, I would not have struck the requested paragraphs.

Amending Regulations Had No Effect on the Assessments

[21] It is not entirely clear whether the Appellant hopes to attack the constitutionality of the Amending Regulations themselves or the Regulations (as amended). As a result, the Respondent has addressed both arguments. I will deal with the Amending Regulations first.

[22] The Appellant pleads that light fuel oil is a "more emissions-intensive fuel than other home heating fuels, including natural gas", that its use "is most prevalent in Atlantic Canada", that "a negligible number of homes in Saskatchewan use [light fuel oil] for heating their homes", and that "[w]hile the exemption would nominally apply nationwide, the publicly stated purpose and motivation, as expressed in public statements by representatives of Canada, was to benefit constituents of Members of Parliament…in Atlantic Canada, where a large portion of homeowners in the region use heating oil to heat their homes."[11]

[23] When deciding whether it is plain and obvious that this argument discloses no reasonable grounds for appeal, I must assume that the facts the Appellant pled are true unless they are manifestly incapable of being proven (*Knight*[12]). Therefore, in simple terms, I must assume that the Amending Regulations were passed, not to set a minimum national standard of greenhouse gas price stringency to reduce greenhouse gas emissions, but rather to improve the political fortunes of the government in Atlantic Canada at the expense of increased greenhouse gas emissions.

[24] Assuming those facts are true, the Appellant may well have a valid complaint about the constitutionality of the Amending Regulations. However, the Tax Court cannot simply consider any constitutional question put before it. To the extent that the Tax Court has the power to determine whether the Amending Regulations are *ultra vires*, it may only do so in the context of determining the validity and correctness of the Appellant's assessments.

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11 Notice of Appeal, at paras. 31, 36, 37 and 38.

12 At paras. 22 and 23.

[25] The Assessments relate entirely to the Appellant's supplies of natural gas. The Amending Regulations affected the fuel charge on light fuel oil, not natural gas. Their *vires* or lack thereof would have no effect on the correctness of the assessments. Therefore, it is plain and obvious that the Court has no jurisdiction to hear the argument.

A Distinction Without Difference

[26] The Appellant says that it is not simply arguing that the Amending Regulations were *ultra vires*. It is arguing that the Amending Regulations rendered the Regulations (as amended) *ultra vires*.

[27] The Appellant is making a distinction without a difference. The only differences between the Regulations and the Regulations (as amended) are the changes made by the Amending Regulations. When the Appellant asserts that the Regulations (as amended) are *ultra vires*, what the Appellant is really saying is that the changes that the Amending Regulations made to the Regulations are *ultra vires*. That is simply another way of saying that the Amending Regulations are *ultra vires*. As set out above, a finding that the Amending Regulations are *ultra vires* would have no effect on the assessments and thus this Court has no jurisdiction to consider that issue.

Tax Court Would Never Grant the Desired Relief

[28] The Appellant is trying to distinguish between the Amending Regulations and the Regulations (as amended) because the Appellant wants to frame the argument in a way that allows it to say that a possible outcome would be for the trial judge to read down the Regulations (as amended) in a way that reduces or eliminates the fuel charge on natural gas and, therefore, that the Tax Court has jurisdiction to hear the argument. There is no merit to this position.

[29] Even if a trial judge found the Regulations (as amended) to be *ultra vires*, the only conceivable solution would be to declare the changes put in place by the Amending Regulations to be of no force and effect. Despite the Appellant's wishes to the contrary, there is simply no way that the trial judge would choose to step into the shoes of the Governor in Council and set national greenhouse gas pricing policy themselves.

[30] Tax Court judges understand the parameters of their judicial role. They also understand that, if they are forced to read down legislation, they should do so in a way that interferes with the law in question as little as possible. If only part of a provision is unconstitutional, only that part should be declared to be of no force and effect (*Schachter v. The Queen*[13]).

[31] The Appellant points out that, prior to the most recent federal election, the government did, in fact, eliminate the fuel charge from all types of home heating fuel and argues that this proves it is a viable outcome. I disagree. The fact that the government chose to make that change does not mean the choice is open to a Tax Court judge.

[32] The best case scenario for the Appellant is that the trial judge would find that the changes made by the Amending Regulations were of no force and effect. Since that outcome would have no impact on the assessments, it is plain and obvious that the Court does not have jurisdiction to grant the relief sought.

Conclusion

[33] Based on all of the foregoing, I will strike paragraphs 3, 4, 6, 24, 26, 28 to 50, 64(iv), 68 to 78, 93, 94, 97(ii), 97(v) and 97(vi) of the Notice of Appeal.

[34] The Respondent has asked that the Appellant not be granted leave to amend these paragraphs. I see no basis on which the Appellant could cure any the above deficiencies and therefore grant the request.

C. Remaining Argument – Interjurisdictional and Crown Immunity

[35] The Notice of Appeal also raises the issue of whether interjurisdictional and Crown immunity prevent the federal government from assessing the Appellant. This is a novel issue and, accordingly, the Respondent is not seeking to strike it.

[13] [1992] 2 SCR 679, at pg. 696.

[36] The Appellant argues that paragraphs 28 to 50 (which I struck above) "provide relevant factual and legislative context" for the interjurisdictional and Crown immunity issue and therefore should not be struck.[14] I disagree.

[37] Paragraphs 28 to 50 lay out the history of the Amending Regulations, the government's alleged motivations for implementing them and their impact on fuel charges in Atlantic Canada and elsewhere. None of these facts relates to the interjurisdictional and Crown immunity issue. Either the Appellant enjoys interjurisdictional or Crown immunity or it does not. The unequal treatment of fuel charges in Saskatchewan and Atlantic Canada has no bearing on that issue. The sole reason to keep these paragraphs in would be to bias the trial judge against the Respondent because of the perceived unfairness of the Amending Regulations. Leaving them in would also result in a significant waste of time at both discovery and trial.

[38] The Appellant says that it needs to establish some background to explain why, having complied with the Act from the beginning, it suddenly stopped remitting the fuel charge. The Appellant is concerned that the Respondent could argue that the Appellant lost its interjurisdictional or Crown immunity by initially acquiescing to the fuel charges and that it needs to be able to show why it changed its position.

[39] The Respondent suggests that a simple paragraph focused on why the Appellant changed its mind would convey this information while avoiding unnecessary discovery and trial time. I agree.

[40] I will grant the Appellant leave to amend the Notice of Appeal to add a paragraph explaining why the Appellant changed its mind. The paragraphs can explain that the Appellant came to the conclusion that the Amending Regulations were *ultra vires* because they no longer set minimum national standards of greenhouse gas price stringency to reduce greenhouse gas emissions, that the Appellant believed that the Amending Regulations were implemented for political purposes and that the Appellant therefore took the position that it was no longer required to comply with the Act. The Appellant shall not, however, plead the facts that caused it to come to the foregoing belief and conclusion.

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[14] Appellant's Written Submissions, para. 37.

D. Collection Attempts

[41] Paragraphs 60 to 63 and 90 to 92 of the Notice of Appeal allege that the Minister improperly used a requirement to pay to attempt to collect the fuel charges and refused to come to some sort of understanding with the Appellant regarding payment pending the outcome of the dispute.

Collection Matters Belong in the Federal Court

[42] The Respondent submits that the process by which the Minister enforces the assessments is immaterial to the validity or correctness of the assessments. I agree. The Tax Court's role is to determine whether the assessments were correct. Jurisdiction over collection matters lies with the Federal Court.

[43] The Appellant acknowledges that the Tax Court has no jurisdiction over collections but argues that the facts in paragraphs 60 to 63 and the related argument in paragraphs 90 to 92, support the Appellant's interjurisdictional and Crown immunity argument by providing "relevant background to the effect and end result of an [a]ssessment issued against the [Appellant]".[15]

[44] I accept that some background would be appropriate. That said, it is important to distinguish between pleadings that go to the fact that collection action occurred and pleadings that go to the details of how the collection action occurred.

[45] The Appellant's assertions that go to the means the Minister used to attempt collection (a requirement to pay), whether it was attempted too early, whether it was attempted without consultation and whether it was attempted despite the fact that the CRA knew the bank account in question held monies from the Appellant's general revenue fund are unnecessary. These pleadings appear to have been included solely to make the Respondent look bad. If I allow the Appellant to argue about the manner in which the CRA tried to collect the tax, it risks unnecessarily lengthening the discovery and trial process by bringing in issues that should be and, in fact, already have been, before the Federal Court.

[46] The appropriate solution is to strike all of the paragraphs but give the Appellant leave to add a simple paragraph that states that, as is the Minister's right

[15] Appellant's Written Brief, para. 78.

under the Act, the Minister attempted to collect the fuel charges by seizing the Appellant's assets, in particular, its consolidated revenue fund and that the Appellant did not consent to that action. No further details are needed.

[47] Stating that the Appellant did not consent to the action is less inflammatory than the existing statement that the Minister took the actions "unilaterally" and also less likely to waste discovery and trial time in a debate over what, if any, consultation or discussions occurred.

E. Interest and Penalties

[48] Before concluding, I will turn to two minor issues that inadvertently came to my attention.

[49] The parties agree that the Minister did not impose penalties. Accordingly, I will strike the words "and penalties" from paragraphs 64(vi) and 97(vii).

[50] Paragraph 66 sets out the statutory provisions that the Appellant intends to rely upon. One of those provisions is section 100 of the Act. That section gives the Minister discretion to waive interest. Referring to this section suggests that the Appellant is seeking an interest waiver. The Appellant, of course, recognizes that the Tax Court cannot waive interest. The Appellant confirmed that it is seeking no such waiver and that I could therefore strike the phrase "100," from paragraph 66.

Signed this 27th day of November 2025.

"David E. Graham"

Graham J.

Schedule A

Court File No.: _____

TAX COURT OF CANADA

BETWEEN:

THE GOVERNMENT OF SASKATCHEWAN

Appellant

- and -

HIS MAJESTY THE KING

Respondent

NOTICE OF APPEAL

I. ADDRESS OF THE APPELLANT

1. The address of the Appellant is in care of its counsel as follows:

Osler, Hoskin & Harcourt LLP
Barristers & Solicitors
Suite 3000, Bentall Four
1055 Dunsmuir Street
Vancouver, BC V7X 1K8

Attention: David Jacyk

II. OVERVIEW

2. In the *References re Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11 (the "**SCC Reference**"), the Supreme Court of Canada ("**SCC**") found the *Greenhouse Gas Pollution Pricing Act* (the "**GGPPA**") to be constitutional on the narrow ground that minimum national standards of greenhouse gas price stringency are a

matter of national concern under the "Peace, Order, and good Government" clause of the *Constitution Act, 1867*.

3. Three years later, in its administration and enforcement of the GGPPA, the Federal Government has abandoned the concept of minimum national standards by arbitrarily assessing and collecting the charge on home heating fuels used in Saskatchewan and other provinces, while exempting the charge on home heating oil used by Atlantic Canadians. In doing so, Canada has undermined the basis on which it argued the GGPPA was necessarily constitutional in the first instance - a "minimum national standard".

4. In this case, the Federal Government has arbitrarily applied the charge to the Province's distribution of home heating fuel while at the same time abstaining from applying the charge to the form of home heating fuel prevalent in the Atlantic provinces. This selective, arbitrary, and inconsistent application of the charge on home heating fuel amounts to the precise industry and regional targeting about which certain justices of the SCC warned when considering the potential for future unconstitutional regulatory overreach. This unconstitutional overreach has now been actualized through the assessments in this case under the current administration of the GGPPA.

5. After the SCC's decision in the SCC Reference, and up to December 2023, the Province, either directly or through a Crown corporation, collected and remitted the charge on home heating fuel pursuant to section 17 in good faith.

6. However, the Assessments are based on an unconstitutional, discriminatory and/or unreasonable policy, implemented through draft regulations (recently enacted), that does not accord with the parameters of constitutional authority established in the SCC Reference. As a result, the Assessments must be set aside as transgressing the "minimum national standard" that formed the lynchpin on which the SCC found the GGPPA to be constitutional as within the Federal Government's authority as a matter of "Peace, Order and good Government".

III. ASSESSMENTS UNDER APPEAL

7. The Minister of National Revenue (the "**Minister**") issued the following assessments to the Government of Saskatchewan (the **"Province**") for fuel charges under the GGPPA:

Period	Assessment Date	Fuel Charge	Payments	Interest	Assessment
January 2024	March 12, 2024	$13,047,394.35	$5,084,816.50	$26,146.08	$7,988,723.93
February 2024	April 15, 2024	$32,277,104.79	$14,620,041.43	$72,503.58	$17,729,566.94
March 2024	May 21, 2024	$30,238,692.65	$14,014,268.40	$93,345.75	$16,317,770.00
April 2024	June 12, 2024	$26,038,557.05	$12,289,990.12	$45,145.07	$13,793,712.00
May 2024	July 12, 2024	$15,864,109.52	$7,926,741.38	$23,461.22	$7,960,829.36
June 2024	August 13, 2024	$9,400,565.30	$4,794,866.94	$14,744.88	$4,620,443.24
July 2024	September 13, 2024	$5,931,390.60	$3,008,711.12	$9,356.79	$2,932,036.27

(collectively, the "**Assessments**")

8. The amounts of the Assessments shown in the "Assessment" column above pertain only to the purported application of fuel charges to home heating fuel used in the province of Saskatchewan.

9. The Province has included, in its fuel charge returns, amounts that the GGPPA would purport to require the Province to pay as the registered distributor in respect of residential home heating fuel.

10. The Province has neither remitted nor collected those portions from January 2024 onwards, on the basis that the assessments are incompatible with the "minimum national standard" on which the SCC found the GGPPA constitutional and therefore exceed federal authority.

11. The Appellant duly objected to the Assessments as follows:

(i) to the Assessments for the January 2024 and February 2024 periods by way of notices of objection dated June 7, 2024;

(ii) to the Assessments for the March 2024 and April 2024 periods by way of notices of objection dated July 9, 2024; and

(iii) to the Assessments for the May 2024, June 2024, and July 2024 periods by way of notices of objection dated September 20, 2024.

12. The Minister confirmed the Assessments by way of a notice of decision dated December 2, 2024.

13. The Minister continues to assess the Province for monthly periods for similar amounts that relate to home heating fuel.

IV. FACTS AND LEGISLATIVE BACKGROUND

SaskEnergy

14. SaskEnergy Incorporated ("**SaskEnergy**") is a corporation and, for all purposes, an agent of the Crown, established under *The SaskEnergy Act*, S.S. 1992, c. S-35.1, as amended (the "**SEA**").

15. SaskEnergy is a utility that provides natural gas to homes, businesses, and industry throughout Saskatchewan.

16. SaskEnergy is designated under *The Crown Corporations Regulations, 1993*, R.R.S. c. C-50.101 Reg. 1, as amended (the "**CCR**") as a "designated subsidiary Crown corporation" for the purposes of *The Crown Corporations Act, 1993*, S.S. 1993, c. C-50.101, as amended (the "**CCA**").

17. SaskEnergy entered into a Services Agreement with the Province as of December 22, 2023, regarding their respective rights and obligations pursuant to the SEA and respecting the physical distribution and delivery of marketable natural gas and non-marketable natural gas in Saskatchewan under Part 1 of the GGPPA.

18. As a consequence of the Services Agreement, the Province is deemed to be the distributor of marketable and non-marketable natural gas in Saskatchewan for the purposes of Part 1 of the GGPPA, effective January 1, 2024.

19. Almost all of Saskatchewan homes are heated by natural gas, for which the Province is the registered distributor and for which SaskEnergy as a Crown Corporation is the provider.

The existing legislative scheme - the GGPPA

20. The GGPPA was enacted by Parliament on June 18, 2018 and consists of four parts, the first two of which establish the following legislative scheme:

    (i) Part 1 of the GGPPA establishes a charge on prescribed types of fuel that applies to fuel produced, delivered or used in a listed province, fuels brought into a listed province from another place in Canada and fuel imported into Canada at a location in a listed province (ss. 17(1), 18(1), 19(1) and (2) and 21(1) of the GGPPA). Part 1 of Schedule 1 contains a list of provinces to which Part 1 of the GGPPA apply, which includes Saskatchewan.

    (ii) Part 2 of the GGPPA sets out a pricing mechanism for industrial greenhouse gas ("**GHG**") emissions by large emissions-intensive industrial facilities.

21. Section 17 of Part 1 of the GGPPA imposes a charge on a "registered distributor" that delivers a prescribed type of fuel at a "particular time" in a listed province to another person in an amount determined under section 40 of the GGPPA (the "**Fuel Charge**").

22. The Fuel Charge applies to 22 carbon-based fuels that release GHG emissions when burned, including light fuel oil and natural gas. Schedule 2 of the GGPPA lists the types of fuel to which the Fuel Charge applies and indicates the applicable rates of charge for each one. The intent of the GGPPA is for the Fuel Charge to be passed on to consumers in the form of higher energy prices.

23. Section 166 of the GGPPA provides that the Governor in Council ("**GIC**") can make regulations prescribing anything that is to be prescribed or determined by regulation under Part 1. In particular, the GGPPA provides that the GIC may make regulations in relation to the fuel charge system by modifying the listed types of fuel and the applicable rates of charge in Schedule 2, or defining words or expressions used in Part 1 of the GGPPA, or amending Part 1 of Schedule 1, or Schedule 2.

24. Any such regulations enacted under the GGPPA must be made "for the purpose of ensuring that the pricing of greenhouse gas emissions is applied broadly in Canada at levels that the Governor in Council considers appropriate" (ss. 166(2)), and the GIC, in making them, "shall take into account, as the primary factor, the stringency of provincial pricing mechanisms for greenhouse gas emissions" (ss. 166(3)).

25. The *Fuel Charge Regulations*, S.C. 2018, c. 12, s. 187 were enacted and in force on June 21, 2018.

26. The *Fuel Charge Regulations* were later amended on December 16, 2024 (the "**Amended Regulation**").

The GGPPA References

27. In the SCC Reference, a majority of the SCC reasoned that the GGPPA was (in its then form), in pith and substance, a scheme to enact "minimum national standards of GHG price stringency to reduce GHG emissions" and, accordingly, *intra vires* federal jurisdiction as a matter of national concern under the Peace, Order and good Government clause of the *Constitution Act, 1867*.

The Atlantic Canada Heating Oil Exemption

28. Over 2 years after the SCC Reference, the Federal Government implemented a policy regarding the Fuel Charge to exempt home heating oil prevalent in Atlantic Canada, but not home heating fuel commonly used in Saskatchewan and other Canadian provinces.

29. On October 26, 2023, Canada announced the creation of an exemption from the charge under the GGPPA for home heating oil for three years.

30. Despite the absence of any legislated or regulatory authority for the exemption, the Canada Revenue Agency (the "**CRA**") immediately implemented the policy following its public announcement, while releasing a draft Regulation (the "**Draft Regulation**").

31. While the exemption would nominally apply nationwide, the publicly stated purpose and motivation, as expressed in public statements by representatives of Canada, was to benefit constituents of Members of Parliament ("**MPs**") in Atlantic Canada, where a large portion of homeowners in the region use heating oil to heat their homes.

32. Prime Minister Justin Trudeau's announcement included the following rationale:

> We've heard clearly from Atlantic Canadians through our amazing Atlantic MPs that since the federal pollution price came into force … certain features of that pollution price needed adjusting to work for everyone …

33. On October 28, 2023, Liberal MP, Gudie Hutchings, Rural Economic Development Minister, stated that if Prairie provinces want to secure carve-outs in the Federal Government's carbon pricing policy, they should elect more Liberal MPs:

> That's a discussion that we'll have down the road when we know that this one is working, but I can tell you Atlantic Caucus was vocal with what they've heard from their constituents, and perhaps they need to elect more Liberals in the Prairies so that we can have that conversation as well…

34. Other public statements were made by the reigning government representatives suggesting that the creation of the policy exempting home heating oil was influenced by political partisan motivations.

35. The large majority of Saskatchewan residents rely on natural gas for home heating.

36. Comparatively, a negligible number of homes in Saskatchewan use home heating oil for heating their homes.

37. Regionally, use of heating oil is most prevalent in Atlantic Canada.

38. Heating oil is a more emissions-intensive fuel than other home heating fuels, including natural gas.

39. Based on data gathered by Statistics Canada, the approximate usage of heating oil in the Atlantic Provinces is as follows:

    (i) 61% of households use heating oil in Prince Edward Island;

    (ii) 43% of households use heating oil in Nova Scotia;

    (iii) 22% of households use heating oil in Newfoundland and Labrador; and

    (iv) 8% of households use heating oil in New Brunswick.

40. Heating oil is used to a far lesser extent in other "listed" provinces that are subject to the GGPPA:

    (i) less than 2% of households in Ontario use heating oil; and

    (ii) less than 1% of households in Manitoba, Alberta and Saskatchewan use heating oil.

41. The exemption for heating oil did not apply to provinces that are not subject to the GGPPA, but which are subject to provincial emission regimes approved of by the Federal Government, such that they are excluded from the GGPPA regime.

42. Residents of Quebec, British Columbia, and the Northwest Territories who heat their homes with heating oil remained subject to their provincial or territorial GHG pricing plans which continued to price emissions from heating oil.

Regulatory Impact Analysis

43. The actual Amended Regulation was not implemented until December 16, 2024, 14 months after the public announcement of the exemption.

44. The Amended Regulation was released with a regulatory impact analysis statement (the "**RIAS**").

45. The RIAS claimed to rely on data published by the federal government, including Natural Resources Canada's National Energy Use Database, and Statistics Canada Table 25-10-0060-01 (Household Energy Consumption, Canada and Provinces).

46. The formulation of, and justification for, the exemption was explicitly based on the data set out in paragraphs 37 through 40 above.

47. The regulatory impact analysis did not consider or establish how temporary relief from the Fuel Charge would in fact incentivize or encourage a current user of home heating oil to switch to an electric heat pump or other form of heating that resulted in less carbon emissions.

48. The exemption under the Amending Regulation was expected to result in foregone emissions reductions of at least $73 million during the period of temporary pause of the fuel charge on the deliveries of heating oil (2023-2024 to 2026-2027).

49. The temporary pause of the fuel charge on deliveries of heating oil was expected to lead to foregone reductions in GHG emissions of at least 257,700 tonnes of carbon dioxide equivalent over the period of application of the exemption.

50. The RIAS provides no coherent rationale for the pause of the Fuel Charge on home heating oil only, while excluding any carbon emitting home heating fuel, other than to provide temporary price relief to Atlantic Canadians.

The Assessments

51. On February 29, 2024, the Province announced that it would not be remitting the charge under the GGPPA on natural gas used for residential heating purposes to any person.

52. On February 20, 2024, the Province filed its Fuel Charge Return as a registrant under the GGPPA, for January 2024 reporting "net charge payable" of $13,047,394.35 (as set out in the return) but remitting $5,084,816.50. The difference between the "net charge payable" and the amount remitted for the month of January 2024 related to the amount of the Fuel Charge on home heating natural gas.

53. For clarity, at all times, the Province did not and does not agree that the net charge actually payable for January 2024 is $13,047,394.35.

54. By way of a Notice dated March 12, 2024, CRA assessed the following amounts against the Province for the period from January 1, 2024 to January 31, 2024 pursuant to section 108 of the GGPPA:

Description	**Amount**
Fuel Charge	$13,047,394.35
Payment(s) Applied	($5,084,816.50)
Net Balance	$7,962,577.85
Arrears Interest	$26,146.08
Result of Assessment	$7,988,723.93

55. On March 20, 2024, the Province filed its Fuel Charge Return as a registrant under the GGPPA, for the month of February 2024 reporting "net charge payable" of $32,277,104.79 (as set out in the return) but remitting only $14,620,041.43. The difference between the "net charge payable" and the amount remitted for the month

of February 2024 related to the amount of the Fuel Charge on home heating natural gas.

56. For clarity, and at all times, the Province did not and does not agree that the net charge actually payable for February 2024 is $32,277,104.79.

57. By letter dated March 21, 2024, CRA advised the Province that it was conducting an audit of the Province's fuel charge account for the period from January 1, 2024 to January 31, 2024 and requested that certain documents be provided to CRA electronically.

58. On or about April 12, 2024, the Province provided the requested documents to CRA electronically that CRA had requested in its March 20, 2024 letter.

59. By way of a Notice dated April 15, 2024, CRA assessed the following amounts against the Province for the period from February 1, 2024 to February 29, 2024 pursuant to section 108 of the GGPPA:

Description	**Amount**
Fuel Charge	$32,277,104.79
Payment(s) Applied	($14,620,041.43)
Net Balance	$17,657,063.36
Arrears Interest	$72,503.58
Result of Assessment	$17,729,566.94

60. In attempting to enforce the Assessments for the month of January and February 2024 in this case, the Minister through delegates issued a "Requirement to Pay" dated June 25, 2024 (the "**RTP**") to the Royal Bank of Canada in respect of the bank account of the Province (the "**RBC bank account**").

61. By way of letter to the CRA dated June 26, 2024 from the legal representatives of the Province, the respondent was put on notice that the RBC bank account consisted of funds within the General Revenue Fund of the Province.

62. Despite the notice in the letter dated June 26, 2024, the respondent persisted with its attempt to unilaterally seize monies from the General Revenue Fund of the Province:

    (i) notwithstanding the knowledge that funds sought represented monies from the General Revenue Fund of the Province;

    (ii) despite communications from the representatives of the Province to collaboratively address any issue concerning the preservation of amounts assessed under the GGPPA on an interim basis, pending resolution of the disputed Assessments.

63. The RTP issued by the Minister purported to unilaterally appropriate monies from the General Revenue Fund of the Province.

V. ISSUES TO BE DECIDED

64. The issues to be determined include the following:

    (i) whether the Assessments represent an act or exercise of power that exceeds the constitutional authority of the Federal Government thus rendering the assessments constitutionally invalid or inapplicable as an exercise of authority under section 17 of the GGPPA;

    (ii) whether the sale of natural gas in Saskatchewan for the purposes of residential home heating falls within the core of provincial jurisdiction over the "development, conservation and management of natural resources in the province" set out in section 92A of the *Constitution Act, 1867* and is thereby, in these circumstances, exempt from the GGPPA and the GGPPA Regulations by virtue of the doctrine of interjurisdictional immunity;

(iii) whether the Province is exempt from the charges and levies imposed by the Federal Government under Part 1 of the GGPPA on natural gas delivered by the Provincial Crown to its residents for home heating purposes pursuant to the doctrine of Crown immunity and, in particular, pursuant to section 126 of the *Constitution Act, 1867*;

(iv) as a separate matter, whether the assessments are invalid as representing an arbitrary exercise of power or process, by enforcing the Fuel Charge against some but not others and/or the Regulations are *ultra vires* the GGPPA because the Regulations are not made "for the purpose of ensuring that the pricing of greenhouse gas emissions is applied broadly in Canada at levels that the GIC considers appropriate" while "taking into account, as the primary factor, the stringency of provincial pricing mechanisms for greenhouse gas emissions";

(v) whether the Province is liable to pay the Fuel Charges assessed pursuant to section 17 and subsection 40(1) of the GGPPA in the amounts determined or at all; and

(vi) whether the Province is liable to pay the Arrears Interest (or Penalties) assessed pursuant to section 97 of the GGPPA.

65. The amount in issue for each of the issues at subparagraph 64 (i) through (vi) includes the total of all amounts in the Assessments, plus the amount of any other interest that accrues as a result of the Assessments.

VI. STATUTORY PROVISIONS RELIED ON

66. The Province states that the relevant statutory provisions herein include, *inter alia*, sections 5, 17, 36, 57, 68, 69, 70, 71, 97, 100, 108, 110, 113, 123, 125, 166 and 168 of the GGPPA; *Regulations Amending the Fuel Charge Regulations, No. 2*: SOR/2024-282; section 17 of the *Interpretation Act*, R.S.C. 1985, c. I-21, as amended, section 2.20 of *The Legislation Act*, S.S., 2019, c. L-10.2, as amended, sections 2, 7.1, 7.2, 7.4 and 23 of the SEA, the CCR, the CCA, sections 2 to 5 of *The Saskatchewan First Act*, S.S. 2023, c. 9, sections 53, 90, 90S.1, 91, 92, 92A, 125 and 126 of the *Constitution Act, 1867*, the *Saskatchewan Act*, 1905, 4-5 Edw. VII, c. 42 (Can.), *The SaskEnergy (Carbon Tax Fairness for Families) Amendment Act, 2023*, S.S. 2023, c. 50, *The Saskatchewan Natural Resources Act*, S.C. 1930, c. 41, and the *Reciprocal Taxation Agreement, Canada-Saskatchewan*.

VII. REASONS THE APPELLANT INTENDS TO ADVANCE

The Assessments represent an act or exercise of power that exceeds the constitutional authority of the Federal Government

67. CRA's purported exercise of authority under section 17 (and other related sections) through the issuance of the Assessments exceeds federal authority and is constitutionally invalid or inapplicable.

68. Following the SCC Reference, federal authority to implement a fuel charge under the GGPPA was limited to the purpose of establishing national minimum standards. The SCC did not hold that Canada could implement greenhouse gas pricing in a manner that unfairly or arbitrarily discriminated among the provinces and undermined minimal national standards.

69. The reference cases did not ask the Courts to rule on the constitutional validity of any of the *Fuel Charge Regulations,* S.C. 2018, c. 12, s. 187, or of the constitutional validity of section 17 in the context of the Amended Regulation, which was not enacted or in draft form at the time of argument.

70. The SCC was clear that the GGPPA *does not* permit the federal government to pick economic winners and losers on grounds not primarily based on establishing minimum national standards of price stringency in furtherance of the reduction of GHG emissions.

71. Indeed, the decision of the SCC warned the Federal Government that any exercise of authority under the GGPPA that is inconsistent with the general purpose of reducing GHG emissions by establishing minimum national standards of GHG price stringency would be *ultra vires* the GGPPA.

72. The Assessments are inconsistent with the GGPPA's legislated scheme and purpose of establishing minimum national standards of GHG price stringency. The Assessments create a discriminatory and unfair fuel charge for the apparent partisan political purposes of providing a benefit to a region, which is incompatible with any constitutional authority of the Federal Government under the Peace, Order, and good Government power.

73. Home heating fuel prevalent in regions outside of Atlantic Canada are arbitrarily excluded from the home heating exemption, notwithstanding that the Federal Government's constitutional authority of the subject matter of the GGPPA and Regulations are dependent on the application of national minimum standards.

74. The Assessments in this case, combined with the use of ss. 166 and 168 of the GGPPA, alters the character of the exercise of its purported authority under Part 1 of the GGPPA and undermines any authority to issue the Assessments. The exercise of the authority to make regulations that direct exemptions on a regional basis are incompatible with the general purpose of reducing GHG emissions through the specific means of establishing minimum national standards.

75. The Assessments exceed the Federal Government's jurisdiction to maintain a minimum national pricing standard that applies across Canada. Applying the principles articulated in the SCC Reference, the only minimum national standard

that can apply for any of the Assessments for a charge for home heating fuel for the years in question is zero.

76. The Draft Regulations, enacted Regulations and the Assessments represent the Federal overreach that was warned against in the SCC Reference.

77. The exemption and policy underlying it:

(i) is disconnected from the purported objectives of national minimum standards or the objectives of the GGPPA;

(ii) was implemented without regard to any rational analysis of the comparative environmental impact of emissions from home heating oil as compared to impact of emissions from natural gas or other home heating;

(iii) was implemented without regard to a rational assessment of incentives;

(iv) was designed on the basis, and with the knowledge, that it would apply disproportionately to regions in Atlantic Canada, and would largely exclude registered distributors and residents in most or all other provinces;

(v) was structured irrespective of the disproportionate burden left on residents and registered distributors outside of Atlantic Canada; and

(vi) had the purpose and effect of reducing the home heating costs of a significant number of residents of Atlantic Canada from the Fuel Charge in the face of a purported requirement for most residents in Saskatchewan and other provinces to continue to pay the Fuel Charge on their home heating costs.

78. The Assessments:

(i) were issued in the face of a policy and draft Regulation to exempt home heating oil prevalent in certain regions only;

(ii) regulate and punish the Province in a manner that does not involve setting national GHG emission limits and pricing; and

(iii) impose a charge targeting provinces, apparently based on the voting patterns of its constituents.

The Province has interjurisdictional immunity regarding natural gas sold in Saskatchewan for the purposes of residential home heating

79. Pursuant to section 92A of the *Constitution Act, 1867*, Saskatchewan has exclusive jurisdiction to make laws in relation to the development, conservation and management of non-renewable natural resources in the Province, including laws in relation to the rate of primary production therefrom.

80. Provincial energy utilities lie at the core of provincial jurisdiction. Saskatchewan and other resource-rich provinces have long-established Crown utility corporations established through legislation manage non-renewable natural resources.

81. The GGPPA intrudes on this core jurisdiction when it is applied to provincial energy utilities because it impairs the Provinces' ability to manage non-renewable natural resources.

82. The Province is interjurisdictionally immune from the application and operation of the GGPPA and GGPPA Regulations as they relate to natural gas sold in Saskatchewan for the purposes of residential home heating. The provincial power to regulate the sale of natural gas for purposes of residential home heating is absolutely necessary to achieve the purpose for which exclusive legislative jurisdiction over non-renewable natural resources and electrical energy was conferred. The Assessments seriously intrude on the core of this provincial power and do so in a manner that is not connected to setting a national minimum price on carbon emissions. As such, the Province is interjurisdictionally immune from the application and operation of the GGPPA and the GGPPA Regulations as they relate to natural gas sold in Saskatchewan for the purposes of residential home heating.

The Province has Crown immunity

83. The Province possesses a general Crown immunity from federal laws that relate to the essential functions of the Province, including terms and conditions applicable to the conservation and management of non-renewable natural resources, and, more particularly, natural gas and the regulation of GHG emissions and other emissions.

84. The Province has a constitutional right to be free of charges and levies imposed by the Federal Government without the Province's consent with respect to funds that belong to the General Revenue Fund of the Province.

85. The Province has the exclusive power to appropriate money from its Consolidated Revenue Fund by virtue of sections 53, 90 and 126 of the *Constitution Act, 1867*. The federal government has no constitutional authority to impose financial obligations on the provinces or to require provinces to spend their revenues in any particular way.

86. In the SCC Reference, the Court held that the fuel charges imposed by Part 1 of the GGPPA were imposed for the purpose of "altering behaviour". The Province is immune from regulatory charges imposed by the federal government towards such a purpose.

87. Imposing regulatory charges on the Province to alter its behaviour is contrary to sections 53, 90 and 126 of the *Constitution Act, 1867* and is contrary to the principles of federalism, which recognize the sovereignty and autonomy of the provinces.

88. The Province expressly pleads and relies upon, *inter alia*, the principles set out by the SCC in *Reference re Troops in Cape Breton*, [1930] SCR 554.

89. The reference cases did not ask the Courts to rule on issues concerning the application of the GGPPA directly to Provincial Crowns or Crown corporations.

90. The respondent has already, through its action to date, demonstrated that the exercise of purported authority under the GGPPA through the Assessments in this

case includes overextending the use of the provisions of the GGPPA in a manner that would directly and forcibly appropriate monies from the General Revenue Fund of the Province and override the constitutional parameters in section 126.

91. The RTP issued by the Minister, as agent for the Federal Government, purported to unilaterally appropriate monies from the General Revenue Fund of the Province, under the auspices of the purported debt under the GGPPA, a clear breach of section 126 of the *Constitution Act, 1867*.

92. The Respondent persisted with unilateral action to recover monies directly from the General Revenue Fund of the Province, despite communications from the representatives of the Province to collaboratively address any issue concerning the preservation of amounts assessed under the GGPPA on an interim basis, pending resolution of the disputed Assessments.

CRA is acting arbitrarily by enforcing the Fuel Charge against some but not others and/or the Draft Regulations are *ultra vires* the GGPPA

93. For the reasons above, the Assessments also represent an exercise of statutory power that constitutes an abuse of power and is outside the permissible scope of the regulation-making powers under the GGPPA, which the SCC confirmed must be exercised consistent with the general purpose of reducing GHG emissions through the specific means of establishing minimum national standards of GHG price stringency.

94. Neither section 17 nor any other provisions of the GGPPA or the Regulations provides any statutory authorization to discriminate in this manner. Moreover, the Minister in this case exercised the authority under section 17 in a manner that was inconsistent with the scheme and purposes of the GGPPA.

The Province is not liable to pay the Fuel Charges assessed pursuant to section 17 and subsection 40(1) of the GGPPA in the amount determined

95. The Province is further not liable to pay the Fuel Charges assessed pursuant to section 17, and subsection 40(1) of the GGPPA to the extent assessed, or at all.

The Province is not liable to pay the Arrears Interest assessed pursuant to section 97 of the GGPPA

96. The Federal Government has no authority to unilaterally set interest rates for, and charge interest on the Fuel Charge, irrespective of any authority to issue an assessment regarding the Fuel Charge itself.

VIII. RELIEF SOUGHT

97. The Province requests that the Assessments be vacated, varied, or referred back to the Minister for reassessment on the basis that:

(i) the Assessments represent an act or exercise of power that exceeds the constitutional authority of the Federal Government;

(ii) the only minimum national standard in any of the Assessments for a charge for home heating fuel for the years in question is zero;

(iii) the Province has interjurisdictional immunity regarding the natural gas sold in Saskatchewan for the purposes of residential home heating;

(iv) the Province has Crown immunity with respect to the operation of the GGPPA, the GGPPA Regulations, Draft Regulations, and/or the operation of the policies of the Federal Government with respect to charges and levies imposed by the Federal Government on natural gas delivered by the Province to its residents for home heating purposes;

(v) the Assessments constitute an abuse of power and process, and/or represent a purported exercise of authority under section 17 that was impermissibly

discriminatory, and/or made in a manner that was inconsistent with the scheme and purposes of the GGPPA;

(vi) in the alternative, the quantum of the Assessments be reduced to the amount that demonstrably represents only a minimum national standard of GHG pricing; and

(vii) in the further alternative, the quantum of the Assessments be reduced to exclude all interest and penalties.

98. Specifically, the Province requests, in respect of each issue to be decided, that the Assessments be vacated, varied, or referred back to the Minister to reverse the amount of the fuel charge included in the "Assessment" column and the interest in the "Interest" column, all as set out in paragraph 7 above, plus the amount of any other interest that accrues as a result of the Assessments.

IX. DATE

99. This Notice of Appeal is dated at the City of Vancouver, in the Province of British Columbia, this 27th day of February, 2025.

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