

# In the Court of Appeal of Alberta

**Citation: Reference Re *Clean Electricity Regulations* (Canada), 2026 ABCA 108**

**Date:** 20260402  
**Docket:** 2503-0079AC  
**Registry:** Edmonton

**In the Matter of the *Clean Electricity Regulations*, SOR/2024-263, under subsection 93(1), sections 286.1 and 326, and subsection 330 (3.2) of the *Canadian Environmental Protection Act, 1999*, SC 1999, c 33**

- and -

**In the Matter of a Reference by the Lieutenant Governor in Council to the Court of Appeal of Alberta under the *Judicature Act*, RSA 2000, c J-2, s 26**

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**Reasons for Decision of  
The Honourable Justice Kevin Feehan**

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Application for Advice and Directions #5

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**Reasons for Decision of  
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**I. Introduction**

[1] The Attorney General of Canada and the Attorney General of Alberta each bring applications arising out of questioning on affidavits, conducted February 6 through 11, 2026.

[2] On February 9 and 10, 2026, counsel for Canada examined Adam Gaffney and Kevin Dawson on their affidavits. Adam Gaffney is the Manager of Generation Forecasting and Resource Adequacy, Alberta Electric System Operator. His affidavit focused on modeling related to the *Clean Electricity Regulations*, SOR/2024-263. Kevin Dawson is the Vice President of Strategy and Chief Economist, Alberta Electric System Operator. His affidavit focused on the reliability implications of the *Clean Electricity Regulations*.

[3] On February 11, 2026, counsel for Alberta examined Dr Pascal Lesage, the acting head of the Modeling and Analytics for Policy Support Unit of the Electricity and Combustion Division of Environment and Climate Change Canada's Environmental Protection Branch.

[4] In this Court's order of February 6, 2026, the following was directed:

Dr. Lesage must produce any formal analysis, including of information from the Government of Alberta or the Alberta Electric System Operator (AESO), prepared by Dr. Lesage or his team between the date the draft *Clean Electricity Regulations* (CER) were published and before the final CER were published, that led to the conclusion that changes to Canada's model or the regulatory design of the draft CER were necessary, if such document or documents exist.

[5] As a result of that order, Dr Lesage indicated he was not aware of any documents coming within that description, but produced two additional documents related to Part G of his affidavit.

**II. Applications**

[6] Arising out of the questioning on affidavits of Adam Gaffney and Kevin Dawson, Canada seeks the following orders, set out in its application of March 9, 2026:

- a) an order that the documents listed in schedules A and B to its application be marked as exhibits;
- b) an order extending the current deadline to complete all questioning on affidavits;

- c) an order that Adam Gaffney and Kevin Dawson re-attend, at their own expense, for questioning on their respective affidavits, both affirmed August 7, 2025, regarding Alberta's Electric System Operator's Restructured Energy Market, broadly;
- d) in the alternative, an order that:
  - i. Adam Gaffney re-attend, at his own expense, for questioning on his affidavit to answer the questions listed in schedule C to its application, and any follow-up questions arising from the answers provided;
  - ii. Kevin Dawson re-attend, at his own expense, for questioning on his affidavit to answer the questions listed in schedule D to its application, and any follow-up questions arising from the answers provided;
- e) in the further alternative, an order that:
  - i. Adam Gaffney re-attend, at his own expense, for questioning on his affidavit to answer the questions listed in schedule C to its application;
  - ii. Kevin Dawson re-attend, at his own expense, for questioning on his affidavit to answer the questions listed in schedule D to its application;

[7] Arising out of the questioning on affidavit of Dr Pascal Lesage, counsel for Alberta seeks the following orders, set out in its application of March 19, 2026:

- a. directing Canada to file a redacted version of Volume 2 of its Record filed in these proceedings redacting Parts G and H of the affidavit and expert report of Dr Lesage affirmed December 12, 2025, or alternatively, directing Dr Lesage to provide answers to the undertakings set out in appendix A to its application;
- b. compelling Dr Lesage to answer undertaking #1 given by him during questioning on February 11, 2026;
- c. compelling Dr Lesage to provide a further and better response to undertaking #19;
- d. requiring Dr Lesage to re-attend for questioning to answer the question set out in appendix B to its application and to be cross-examined on any matter relevant to these Reference proceedings, including but not limited to, any

responses to objected-to questions and/or undertakings Dr Lesage has provided or is ordered to provide.

[8] During oral submissions, Alberta withdrew a request for an answer to undertaking #1, and to the question posed at page 83, lines 12 to 15 of his transcript.

[9] On March 13, 2026, Canada advised Alberta that upon a review of Dr Lesage's undertakings #1 through #14, it did not wish to waive privilege over information contained in documents responsive to those undertakings, would no longer seek to have Dr Lesage qualified as an independent expert, and accepted that Part G of the Lesage affidavit was inadmissible, while maintaining that Part B should be left for the Reference panel's determination as to admissibility.

### **III. Orders**

[10] Canada will withdraw the current filed affidavit of Dr Lesage and refile the affidavit leaving his status only as a participant expert witness, and deleting from it:

- (a) the title "Affidavit and Expert Report", replacing it simply with the title "Affidavit";
- (b) Part G of the affidavit;
- (c) from Parts A to F and H of the affidavit, and elsewhere as necessary, any references to it being an expert report or to Dr Lesage as being an "expert witness providing opinion evidence";
- (d) from paragraph 16 (vi) the description of the contents of Part G;
- (e) from paragraph 74 the reference to Part G;
- (f) from Section H, the heading and all but the first sentence of paragraph 145.

[11] Canada applies to have five documents, presented to Adam Gaffney or Kevin Dawson during their questioning on affidavits, marked as exhibits. None of those documents will be marked as exhibits. In each case, the witness indicated they did not recognize the document, were not familiar with the document, or had not read the document in full or sometimes at all. A common response was that the witness would have received a "high-level summary or an overview" of the document. Although the documents requested to be marked are not sufficiently identified with these witnesses, the high-level summaries may be more properly identified, and if so, marked as exhibits. All such high-level summaries or overviews shall be produced.

[12] Adam Gaffney and Kevin Dawson shall re-attend, at their own expense, for questioning on the produced high-level summaries or overviews referenced in the above paragraph and to answer questions listed in the application of Canada, respectively in schedules C and D, and any follow-up questions arising from the answers provided. They are not required to inform themselves of any information not within their personal knowledge. These follow-up questionings shall be held virtually and shall not exceed one half day for each of Adam Gaffney and Kevin Dawson.

[13] Dr Lesage is directed to provide an unedited copy of the fourth document provided by him on February 11, 2026 in response to undertaking #19, “an internal document provided of a summary of changes made to NextGrid, which was used to inform ECCC Senior Management about the changes made as a result of engagement”, referred to in argument as the 2024 Internal MAPS Analysis, dated August 16, 2024. He may be questioned restricted to that document, but the questioning may not extend, as requested by Alberta, to “any matter relevant to these Reference proceedings”. This follow-up questioning shall be held virtually and shall not exceed one half day.

#### IV. Schedule Changes

[14] The scheduled deadlines set out in the Reasons for Decision of January 23, 2026 in this matter, 2026 ABCA 22, are modified as follows:

April 10, 2026 (or as soon thereafter as possible)	Further questioning on affidavits as permitted by these reasons
April 10, 2026	The Attorney General of Quebec to advise as to the timing of the filing of Quebec’s integrated energy resource management plan
April 17, 2026	Those Intervenors granted permission to file evidence to file and serve their Records
April 23, 2026	Fifth Case Management meeting to be held at 1:00 pm via Webex
May 16, 2026	Canada to file and serve its Factum
June 12, 2026	Intervenors to file and serve their Facta
July 24, 2026	Alberta to file and serve its Reply Factum to Canada’s Factum Alberta to file and serve its Reply Factum to Intervenor Facta Canada to file and serve its Reply Factum to Intervenor Facta
September 3, 2026	Sixth Case Management meeting to be held at 1:00 pm via Webex

November 16 to 19, 2026	Date for hearing (4 days) of Reference
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Application heard on March 31, 2026

Reasons filed at Edmonton, Alberta  
this 2nd day of April, 2026

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Feehan J.A.

**Appearances:**

N. Parker  
R.L. Martin  
K. Whittleton  
A.L. Ollenberger  
for the Appellant, Attorney General of Alberta

S.M. Telles-Langdon  
K.E. Boyd (No appearance)  
D. B. Shiroky  
J.C. Milne  
for the Respondent, Attorney General of Canada

E. Owens (No appearance)  
J.M. Hunter (No appearance)  
for the Intervenor, Attorney General of Ontario

S. Chayer (No appearance)  
F. Perreault (No appearance)  
A. Papaioannou (No appearance)  
for the Intervenor, Attorney General of Quebec

P.M. McAdam, KC  
N.S. Wernikowski (No appearance)  
T.J. Litowski (No appearance)  
for the Intervenor, Attorney General of Saskatchewan

K. Hille (No appearance)  
L.D. Innes (No appearance)  
A. Attaran  
for the Intervenor, Athabasca Chipewyan First Nation

N. Chalifour (No appearance)  
S.A.G. Elgie (No appearance)  
for the Intervenor, Clean Energy Canada

C.E. Hatt(No appearance)  
A.R.N. McIntosh (No appearance)  
for the Intervenor, David Suzuki Foundation

M. Olszynski (No appearance)  
A. Nanda (No appearance)  
for the Intervenor, Pembina Institute for Appropriate Development