

This summary is prepared by staff of the Court of Appeal of Ontario to help the public understand the Court's opinion in this reference. The summary does not form part of the Court's opinion and is not meant to be used in legal proceedings.

Summary: Reference re Greenhouse Gas
Pollution Pricing Act, 2019 ONCA 544 (C65807)

Ontario brought a reference to the Court of Appeal for Ontario asking the Court for its opinion on whether Canada's *Greenhouse Gas Pollution Pricing Act* (the "*Act*") is unconstitutional.

The majority of the Court (Chief Justice Strathy, Associate Chief Justice Hoy, Justice MacPherson, and Justice Sharpe) concluded that the *Act* is constitutional. They found that *Act* comes within Parliament's power under s. 91 of the *Constitution Act, 1867* to legislate on matters that are of national concern for the "Peace, Order, and good Government" of Canada. Justice Huscroft disagreed and concluded that the *Act* is unconstitutional.

The *Act* was passed by Parliament in 2018. It puts a price on carbon pollution in order to reduce greenhouse gas ("GHG") emissions and to encourage innovation and the use of clean technologies. It places a fuel charge on certain producers, distributors, and importers who produce carbon-based fuels. It also establishes emissions limits for large industrial emitters of GHGs. Those that operate within their limit get a credit. Those that exceed it must pay a charge. The net revenues from these measures are returned to the province of origin or to certain other persons. The *Act* serves as a backstop and applies in provinces and territories that have not adopted sufficiently stringent carbon pricing mechanisms.

Ontario asked this court to determine whether the *Act* is unconstitutional. It argued that Parliament does not have the power under the Constitution to enact the *Act* and that the charges the *Act* imposes are unconstitutional taxes.

The Constitution distributes legislative powers between Parliament and the provincial legislatures. To determine if legislation falls within federal or provincial authority, the first step is to examine the legislation's purpose and effects to identify its main thrust. In the second step, the court determines whether that subject matter falls within the legislative authority of Parliament or the provincial legislatures.

Chief Justice Strathy (with whom Justice MacPherson and Justice Sharpe agreed) determined that the main thrust of the *Act* is to establish minimal national standards to reduce GHG emissions. In his view, the *Act* falls within Parliament's power to legislate on matters of national concern for the peace, order, and good government of Canada. GHGs are a distinct form of pollution that have no concern for provincial or national boundaries. Establishing minimum national standards to reduce GHG emissions has a singleness, distinctiveness, and indivisibility that distinguishes it from matters of provincial concern. The *Act* leaves ample opportunity for provinces to pass legislation on other aspects of GHG regulation. The charges it imposes are not unconstitutional regulatory charges.

Associate Chief Justice Hoy wrote a separate opinion defining the main thrust of the legislation more narrowly as establishing minimum national GHG emissions pricing standards to reduce GHG emissions. Like Chief Justice Strathy, she concluded that the *Act* is constitutional under the national concern branch of the peace, order, and good government power.

Justice Huscroft also wrote a separate opinion. He concluded that the *Act* is concerned with regulating GHG emissions, and that recognition of a federal power to establish "minimum national standards" would impermissibly expand Parliament's legislative authority.