

Key Quotes

The Majority judgment (3 Judges)

<p>The <i>GGPPA</i> is constitutional:</p>	<p>Para 2 The <i>Act</i> is constitutional.</p> <p>Para 3 The <i>Act</i> is within Parliament’s jurisdiction to legislate in relation to matters of “national concern” under the “Peace, Order, and good Government” (“POGG”) clause of s. 91 of the <i>Constitution Act, 1867</i>. Parliament has determined that atmospheric accumulation of greenhouse gases (“GHGs”) causes climate changes that pose an existential threat to human civilization and the global ecosystem. The impact on Canada, especially in coastal regions and in the north, is considered particularly acute.</p> <p>Para 4 The need for a collective approach to a matter of national concern, and the risk of non-participation by one or more provinces, permits Canada to adopt minimum national standards to reduce GHG emissions. The <i>Act</i> does this and no more. It leaves ample scope for provincial legislation in relation to the environment, climate change and GHGs, while narrowly constraining federal jurisdiction to address the risk of provincial inaction.</p>
<p>New Matter:</p>	<p>Para 104 Establishing minimum national standards to reduce GHG emissions is a new matter that was not recognized at Confederation... global warming and climate change and, in particular, the role played by anthropogenic GHG emissions in those processes, were not widely understood by the scientific community until well after Confederation. The existential threat to human civilization posed by anthropogenic climate change was discovered even more recently.</p>
<p>Shared Fed-Prov Jurisdiction: the <i>Act</i> sets national minimum standards</p>	<p>Para 115 It bears noting that the <i>Act</i> establishes only a minimum national standard – a minimum standard of stringency for the pricing of GHG emissions. It leaves it open to the individual provinces to legislate more stringent standards, it permits other provinces to adopt the federal minimum standard as their own and it applies the minimum standard to provinces that fail to do either.</p>

	<p>Para 130 the <i>Act</i> deals only with the establishment of minimum national standards to reduce GHG emissions. It operates on a nation-wide basis and leaves scope for provincial standards that meet or exceed that minimum. It also leaves ample provincial legislative opportunity for other aspects of GHG regulation, including laws aimed at the causes and effects of GHG emissions within the province.</p> <p>Para 137 Ontario does not suggest that the <i>Act</i> is in conflict with any existing Ontario legislation or with any measures Ontario proposes to undertake to reduce GHG emissions and mitigate climate change. ... This is a good indication that the <i>Act</i> leaves generous room for provincial jurisdiction in relation to these matters and that the <i>Act</i> simply does what the provinces are constitutionally unable to do.</p>
Carbon Leakage	<p>Para 120 The evidence establishes that a cooperative national carbon pricing system would be undermined by carbon “leakage” in jurisdictions that do not adopt appropriately stringent carbon pricing measures.</p>
Federal-provincial collaboration is needed on climate change; this Act arose from a broad federal-provincial agreement:	<p>Para 107 The <i>Act</i> is the product of extensive efforts – efforts originally endorsed by almost all provinces, including Ontario – to develop a pan-Canadian approach to reducing GHG emissions and mitigating climate change. This, too, reflects the fact that minimum national standards to reduce GHG emissions are of concern to Canada as a whole. The failure of those efforts reflects the reality that one or more dissenting provinces can defeat a national solution to a matter of national concern.</p> <p>Para 134 the <i>Act</i> strikes an appropriate balance between Parliament and provincial legislatures, having regard to the critical importance of the issue of climate change caused by GHG emissions, the need to address it by collective action, both nationally and internationally, and the practical inability of even a majority of the provinces to address it collectively.</p>
Federal Jurisdiction to establish national standards:	<p>Para 77 The <i>Act’s</i> purpose and effects demonstrate that the pith and substance of the <i>Act</i> can be distilled as: “establishing minimum national standards to reduce greenhouse gas emissions.” The</p>

	<p>means chosen by the <i>Act</i> is a minimum national standard of stringency for the pricing of GHG emissions.</p> <p>Para 115 It bears noting that the <i>Act</i> establishes only a minimum national standard – a minimum standard of stringency for the pricing of GHG emissions. It leaves it open to the individual provinces to legislate more stringent standards, it permits other provinces to adopt the federal minimum standard as their own and it applies the minimum standard to provinces that fail to do either.</p>
<p>GHG emissions are a serious <i>international</i> problem, making them a matter of “national concern:”</p>	<p>Para 114 Establishing minimum national standards to reduce GHG emissions meets these requirements [to be a matter of ‘national concern’, from the Supreme Court’s decision in <i>Crown Zellerbach</i>.] GHGs are a distinct form of pollution.... They combine in the atmosphere to become persistent and indivisible in their contribution to anthropogenic climate change. They have no concern for provincial or national boundaries. Emitted anywhere, they cause climate change everywhere, with potentially catastrophic effects on the natural environment and on all forms of life. They are exactly the type of pollutant that both the majority and the minority in <i>Crown Zellerbach</i> contemplated would fall within the national concern branch of the POGG power.</p> <p>Para 106 The <i>Act</i> was enacted, as its Preamble demonstrates, to give effect to Canada’s international obligations... The fact that a challenged law is related to Canada’s international obligations is pertinent to its importance to Canada as a whole. The existence of a treaty or international agreement in relation to the matter also speaks to its singularity and distinctiveness.</p>
<p>Pollution charges are a constitutionally valid <i>regulatory</i> approach:</p>	<p>Para 5 The charges imposed by the <i>Act</i> are themselves constitutional. They are regulatory in nature and connected to the purposes of the <i>Act</i>. They are not taxes.</p> <p>Para 154 I agree that behaviour modification is one of the purposes of the charges. This has been recognized as an appropriate purpose for a regulatory scheme.</p> <p>Paras 162-163: The funds [from the carbon charge] are returned to provinces, taxpayers and institutions to reward them for their participation in</p>

	<p>a program that benefits the entire country. This promotes and rewards behaviour modification, encourages shifts to cleaner fuels, and fosters innovation.</p> <p>I conclude that the fuel charge and the excess emissions charge under the <i>Act</i> are constitutional regulatory charges.</p>
<p>Climate change is Expensive:</p>	<p>Para 15 Both nationally and globally, the economic and human costs of climate change are considerable. Canada's Minister of Finance has estimated that climate change will cost Canada's economy \$5 billion per year by 2020, and up to \$43 billion per year by 2050 if no action is taken to mitigate its effects. The World Health Organization has estimated that climate change is currently causing the deaths of 150,000 people worldwide each year. Rising sea levels threaten the safety and lives of tens of millions of people in vulnerable regions.</p>
<p>Climate Change is a Threat:</p>	<p>Para 7 There is no dispute that global climate change is taking place and that human activities are the primary cause.</p> <p>Para 55 Ontario agrees that climate change is real, is caused by human activities producing GHG emissions, is having serious effects, particularly in the north, and requires proactive measures to address it.</p>
<p>Indigenous:</p>	<p>Para 12 Climate change has had a particularly serious impact on some Indigenous communities in Canada. The impact is greater in these communities because of the traditionally close relationship between Indigenous peoples and the land and waters on which they live.</p>

Concurring Judgment (1 judge agrees with majority, but different reasons)

Narrower Take:	<p>Para 165-166 I agree with the Chief Justice that the <i>Greenhouse Gas Pollution Pricing Act</i> is constitutional under the national concern branch of the “Peace, Order, and good Government” (“POGG”) power... However, I do not agree with him that the true subject matter or “pith and substance” of the <i>Act</i> is properly distilled as: “establishing minimum national standards to reduce greenhouse gas emissions.” In my opinion, that description is too broad and does not capture the true substance of the <i>Act</i>... I conclude that the pith and substance of the <i>Act</i> is: “establishing minimum national greenhouse gas emissions <u>pricing standards</u> to reduce greenhouse gas emissions.”</p>
Less Impact on Provinces:	<p>Para 190 ... characterizing the act in the manner that I propose further constrains the impact on provincial jurisdiction and therefore more readily satisfies the <i>Crown Zellerbach</i> test.</p>

Dissenting Judgment (1 judge disagrees with the decision)

Act Not Constitutional:	<p>Para 238 I conclude that Parts 1 and 2 of the <i>Act</i> are not valid exercises of the national concern branch of the POGG power.</p>
Concurrent power over the environment:	<p>Para 193 neither Parliament nor provincial legislatures enjoy exclusive lawmaking authority concerning either the environment in general or pollution in particular. Instead, lawmaking authority over these subject matters exists at both levels of government.</p>
How to characterize the subject matter of the Act:	<p>Para 197 I disagree with the Chief Justice’s ... conclusion that Parliament has the authority to establish “minimum national standards to reduce GHG emissions” under the POGG power.</p> <p>Para 213 In my view, the <i>Act</i> should be characterized more simply: it regulates GHG emissions.</p>
Not a Matter of National Concern:	<p>Paras 230-231 There are many ways to address climate change and the provinces have ample authority to pursue them, whether alone or in</p>

	<p>partnership with other provinces, using their powers under [the Constitution]. Put another way, nothing stops the provinces from taking steps to reduce their GHG emissions, and hence the emissions of Canada as a whole, and they are in fact doing so. No doubt, action or inaction by one province could undermine the effectiveness of another province's efforts to establish carbon pricing, but this does not speak to provincial inability to address the GHG problem; it is, instead, a reflection of legitimate political disagreement on a matter of policy, and in particular the suitability of carbon pricing as a means of reducing GHG emissions in a particular province.</p>
<p>Impacts on provincial jurisdiction:</p>	<p>Para 196 Given the pervasiveness of GHGs – the fact that GHGs are generated by most activities regulated by the provinces – recognition of federal authority over the cumulative dimensions of GHGs would result in an extensive and permanent transfer of lawmaking authority to Parliament, allowing Parliament to regulate vast areas of provincial life, business as well as personal.</p>
<p>Parliament has ample authority over GHGs and carbon pricing under other heads of power... as do provinces:</p>	<p>Paras 240-241 Parliament has significant authority to address pollution and the environment, including lawmaking authority over taxation, criminal law, and trade and commerce – none of which have been exercised here. Not only can Parliament legislate in a variety of ways to reduce GHGs; it can legislate to accomplish much of what the <i>Act</i> aims to do.</p> <p>The provinces, too, have significant lawmaking authority that allows them to reduce GHGs. In a federal constitutional order, a variety of different approaches may be taken to the same problem, with each jurisdiction learning from the experience of the others.</p>