

**COURT OF APPEAL OF ALBERTA**

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FILE NUMBER:

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IN THE MATTER OF THE *GREENHOUSE GAS  
POLLUTION PRICING ACT*, SC 2018 c.12

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

DOCUMENT:

**FACTUM OF THE INTERVENOR,  
CANADIAN PUBLIC HEALTH ASSOCIATION**

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REFERENCE BY THE LIEUTENANT GOVERNOR IN COUNCIL  
TO THE COURT OF APPEAL OF ALBERTA  
Order in Council file the 20th day of June, 2019

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**FACTUM OF THE INTERVENOR,  
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## PART I - OVERVIEW

1. Climate change, caused by greenhouse gas (“GHG”) emissions, is the gravest global public health threat of the 21<sup>st</sup> century. GHG emissions do not respect provincial or national borders; and neither do their detrimental public health impacts. National and inter-jurisdictional action is required to protect the national public health from the risks of climate change. Parliament is constitutionally empowered to create a framework for that approach.
2. The *Greenhouse Gas Pollution Pricing Act* (the “GGPPA”) is constitutional under the national concern branch of the “peace, order and good government” (“P.O.G.G.”) power. The serious interprovincial and national public health impacts render GHG emissions a matter of national concern. A coordinated, consistent, and evidence-based national approach is necessary from a public health perspective and is available to Parliament. In the alternative, the GGPPA is constitutional pursuant to the criminal law power. Public health is a fundamental concern of the criminal law. Valid use of the criminal law power includes regulation of large-scale threats to public health, including GHG emissions.
3. Public health is a constitutional responsibility of government shared across jurisdictions. Cooperative federalism favours concurrent distribution of jurisdiction over climate change. Federal authority over this public health threat directed to the protection of the national welfare does not impair or displace provincial jurisdiction.

## PART II - FACTS

### A. CPHA and the public health approach

4. The Canadian Public Health Association (“CPHA”) has been at the forefront of public health education, research, policy and practice for over a century, supporting evidence-based solutions to Canada’s public health challenges. Founded in 1910, CPHA is

a national, non-partisan, non-governmental organization representing the interests of public health across Canada with links to the international community.<sup>1</sup>

5. Public health focuses on protecting and improving the collective health of the community. Public health is a discipline distinct from health care. While health care treats an individual's lung cancer, public health promotes abstention from tobacco to prevent cancer. Public health applies an evidence-based approach to promote health and equity across communities, services, programs and policies. In Canada, the public health approach has revolutionized human well-being.<sup>2</sup>

6. Public health experts have long recognized the inextricable link between human health and the environment. Human health outcomes are inseparable from environmental conditions and policies.<sup>3</sup>

**B. The serious borderless public health impacts of climate change**

7. Alberta and Canada agree that climate change is caused by human GHG emissions and presents severe and urgent risks to Canada that require solutions at all levels of government.<sup>4</sup> These risks are unprecedented, both nationally and internationally.

8. The present and future serious and extensive public health effects of climate change have been established with scientific certainty, notably in the recent Reports of the Intergovernmental Panel on Climate Change ("IPCC"), the Lancet's 2018 Countdown Report on health and climate change and CPHA's policy brief on the Lancet Countdown Report, which focusses on Canada-specific impacts and responses. The health threats of climate change are recognized in the GGPPA's preamble.<sup>5</sup>

<sup>1</sup> Affidavit of Ian Culbert, affirmed Dec 19, 2018 [**Culbert Affidavit**], Record of the Intervener, Canadian Public Health Association, [**CPHA's Record**] at paras 5–8.

<sup>2</sup> *Report of the State of Public Health in Canada* (2008), Ex. E to Culbert Affidavit, CPHA's Record, at 7 (79); *Public Health: A Conceptual Framework*, Ex. B to Culbert Affidavit, CPHA's Record, at 3–4 (34–35).

<sup>3</sup> *Report of the State of Public Health in Canada* (2008), *supra* note 2.

<sup>4</sup> Factum of the Attorney General of Alberta [**Alberta's Factum**] at para 29, 49, 55; Factum of the Attorney General of Canada [**Canada's Factum**] at para 1, 9.

<sup>5</sup> *Climate Change 2014 Synthesis Report for Policy Makers* (2014), Ex. G to Culbert Affidavit, CPHA's Record, [**2014 IPCC Report**] and *2018 IPCC Special Report on Global Warming: Summary for Policy Makers* (October 6, 2018), Ex. H to Culbert Affidavit, CPHA's Record, [**2018 IPCC Report**]; *IPCC Factsheets*, Ex. G to Culbert Affidavit, CPHA's Record; *2018 Report of the Lancet Countdown on health and climate change* (November 28 2018), CPHA's Authorities; Tab 13 CPHA *Lancet Countdown 2018 Report: Briefing for Canadian Policymakers* (November 2018), Ex. D to Culbert Affidavit, CPHA's Record, [**Lancet Countdown Report**]. The health impacts are also corroborated in *Canada's 7<sup>th</sup> National Communication on Climate Change*, Ex. I to the Affidavit of John Moffet affirmed September 30, 2019 [**Moffet Affidavit**], Canada's Record, Volume 2, Tab 21 [**Canada UN Communication**]. See: *Greenhouse Gas Pollution Pricing Act*, S.C. 2018, c 12, s. 186 [**GGPPA**], Preamble, CPHA Factum, Schedule B, page 14.

9. Globally, increases in atmospheric temperature are projected to increase morbidity and mortality from heat-related illnesses such as heat stroke, heat edema, heat rash, heat stress, acute cardiovascular disease and renal disease. Vector-borne diseases are increasing in prevalence and are likely to continue their advance as warming temperatures expand the geographic range of insects. Extreme weather events, including flooding, droughts, cyclones, hurricanes and wildfires are expected to increase in frequency and intensity. This extreme weather threatens food security by undermining crop yields, indigenous hunting and gathering practices, and fisheries.<sup>6</sup>

10. The public health impacts of climate change are already being felt in Canada, where warming is happening at double the global rate. For example, an extreme heat-wave in 2018, attributable to climate change, caused over 90 deaths in Quebec. In 2017 and 2018, British Columbia experienced the most dangerous and expensive wildfire seasons in provincial history. Across Canada, climate change has caused a surge in tick-borne Lyme disease and mosquito-borne West Nile virus. Most vulnerable is Canada's North, where warming is occurring at as much as triple the global rate. The scientific consensus is that, without rapid mitigation of GHG emissions, the public health impacts will only intensify.<sup>7</sup>

11. GHG emissions present a borderless problem. GHGs emitted in one province exacerbate the greenhouse effect, which increases the risk of public health impacts across Canada and globally. Vector-borne diseases, heatwaves, and wildfires do not respect political boundaries.

### PART III - ARGUMENT

12. The only issue is whether the GGPPA is *intra vires* of Canada.

**A. The public health approach supports federal authority to coordinate an inter-jurisdictional response to climate change**

13. Consistent, coordinated, evidence-based subnational, national and international action is required to address the public health risks of climate change. Public health

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<sup>6</sup> *Lancet Countdown Report*, *supra* note 5 at 8 (60); *2018 IPCC Report*, *supra* note 5 at B5.2 (172) and B4.2 (171); *2014 IPCC Report*, *supra* note 5 at 6, 8, 15 (134, 136, 143); and *Canada UN Communication*, *supra* note 5 at 186 (292).

<sup>7</sup> *Canada UN Communication*, *supra* note 5 at 178 (284), 184–185 (290–291) and 188 (294); *Lancet Countdown Report*, *supra* note 5 at 8 (60); *2014 IPCC Report*, *supra* note 5 at 18 (146); *IPCC 2018 Report*, *supra* note 5 at B5.2 (172). Alberta's own models show that Alberta's now-repealed Climate Leadership Plan would have saved hundreds of lives a year through fighting GHG emissions. Cross-Examination on Affidavit of Robert Savage, Alberta's Record, at p. 360.

evidence supports the Attorney General of Canada's conclusions that a failure of one province to act with respect to GHGs will undermine efforts to address climate change, and a failure of one province to price carbon can undermine pricing efforts elsewhere.<sup>8</sup>

14. The IPCC has concluded with a high degree of scientific certainty that mitigating the severity of climate change impacts will require (a) rapid and far-reaching action to reduce GHG emissions across sectors; and (b) some form of "budgeting" of GHG emissions on national and international scales. Without co-operative multi-level governance, the IPCC concluded that it will be difficult to overcome regional constraints and achieve emissions reductions targets. Carbon pricing, in particular, has been hindered by weak or inconsistent standards.<sup>9</sup>

15. Public health is ultimately a constitutional responsibility of government shared across jurisdictions. Stewardship, a core principle of public health, places a duty on governments to act in ways that enhance the health of communities.<sup>10</sup> From a public health perspective, Parliament has a responsibility to protect Canada's public health from the national threat of GHG emissions. The Court of Appeal of The Hague recently found that the Netherlands' failure to take timely action to reduce GHGs contravened the right to life guaranteed by Article 2 of the European Commission on Human Rights.<sup>11</sup> Canada is similarly responsible to protect the right to life, liberty and security of its people enshrined in section 7 of the *Charter* from the borderless public health effects of climate change. Parliament must be constitutionally empowered to fulfill its responsibility.<sup>12</sup>

16. As with other national public health issues such as disease prevention, tobacco control and food safety, Parliament has a necessary role to coordinate and set standards for Canada's approach to climate change.<sup>13</sup> This role may be validly carried out either through the P.O.G.G. power or the criminal law power.

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<sup>8</sup> Canada's Factum at paras 102-105.

<sup>9</sup> *IPCC 2014 Report*, *supra* note 5 at 26, 30 (154,158); *IPCC 2018 Report*, *supra* note 5 at C1.3, C2, D7.2 and D7.3 (182, 191-192).

<sup>10</sup> Culbert Affidavit, *supra* note 1, at para 20.

<sup>11</sup> Court of Appeal, The Hague, October 9, 2018, *Urgenda Foundation v. The State of the Netherlands*, Case Number: 200.178.245/01 (The Netherlands), Joint Book of Authorities, Vol IV, Tab 55 at paras 73, 76.

<sup>12</sup> See *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010 (S.C.C.) at para 176, CPHA's Authorities, Tab 2: Per Lamer C.J., the government, is vested with constitutional responsibility for the welfare of Canada's aboriginal peoples and must have the power to legislate in relation to aboriginal rights to land. Similarly, as Canada has the responsibility to safeguard Canada's public health from GHG emissions, it must have the power to legislate in relation to GHGs.

<sup>13</sup> Culbert Affidavit, *supra* note 1 at paras 34-35.

**B. The GGPPA is *intra vires* Canada under the national concern branch of P.O.G.G.**

17. CPHA adopts the Attorney General of Canada’s description of the relevant factors to be considered when determining whether a matter constitutes a national concern.

18. CPHA agrees with Justice Strathy’s characterization in the Ontario reference that the pith and substance of the GGPPA is to establish minimum national standards to reduce greenhouse gas emissions.<sup>14</sup>

19. CPHA’s submissions uniquely focus on the constitutional implications of the public health impacts at issue. The nature of these impacts matters constitutionally.

*i. GHG emissions are a national threat to public health & a national concern*

20. When assessing whether GHG emissions are of national concern, it is critical to assess their public health impacts. In particular, it is the nature and scope of those impacts that engage Canada’s jurisdiction under P.O.G.G. As Estey J. held in *Schneider v. the Queen*, health is:

an amorphous topic which can be addressed by valid federal or provincial legislation, depending in the circumstances of each case on **the nature or scope of the health problem** in question.<sup>15</sup>

Estey J. further held that federal legislation in relation to health “can be supported where the dimension of the problem is national rather than local in nature.”<sup>16</sup>

21. That is the case here. GHG emissions are a matter of national concern for the purposes of P.O.G.G. because their public health impacts are (1) borderless in nature and (2) national in scope. As a result, GHG emissions have attained

such dimensions as to affect the body politic of the Dominion, and to justify the Canadian Parliament in passing laws for their regulation or abolition, in the interest of the Dominion.<sup>17</sup>

<sup>14</sup> Reference re Greenhouse Gas Pollution Pricing Act, 2019 ONCA 544 at para 77

<sup>15</sup> Emphasis added. *Schneider v. The Queen*, [1982] 2 SCR 112, 1982 CarswellBC 241 (S.C.C.) at para 75 [*Schneider*], CPHA’s Authorities, Tab 11.

<sup>16</sup> *Ibid.* See also: *Canadian Blood Services v. Manitoba (Human Rights Commission)*, 2011 MBQB 312 at paras 18, 34, 46 and 47, CPHA’s Authorities, Tab 1 in which the Manitoba Court of Queen’s Bench upheld federal jurisdiction over the safety of the blood supply and blood products under the national concern branch of P.O.G.G., relying on Professor Hogg’s position that the P.O.G.G. power extends to public health matters that have attained national dimensions.

<sup>17</sup> *Ontario (Attorney General) v. Canada (Attorney General)*, [1896] AC 348 PC at 361, Alberta Authorities, Vol 1, Tab 9.

22. A matter may be found to be of national concern where, as here, there exists (a) a distinctive, recognizable subject matter that; (b) has the potential to cause adverse public health impact(s) on an interprovincial or national scale; and (c) where failure of one province to act will impair effective mitigation of the public health impacts.

23. P.O.G.G. has been identified as supporting federal public health legislation since the earliest jurisprudence. In *Russell v. the Queen*, the Privy Council drew an analogy with the criminal law and upheld temperance legislation under the P.O.G.G. power because it protected national public health and safety.<sup>18</sup>

24. In *Standard Sausage Co. v Lee*, the British Columbia Court of Appeal found federal food safety laws were *intra vires* of Canada under the P.O.G.G. power because food safety was a public health matter requiring national action:

it is difficult to apprehend how [Canada] can discharge its paramount duty "to make Laws for the Peace, Order and Good Government of Canada" throughout the whole realm and not merely in parts of it, without "making laws" to secure and protect the public health in its food supply.<sup>19</sup>

Similarly, in *Ontario Hydro v. Ontario (Labour Relations Board)*, the national public health implications of nuclear power supported a finding that the legislation was constitutional under P.O.G.G.<sup>20</sup>

25. In *Crown Zellerbach*, the *Ocean Dumping Control Act* at issue was concerned with the effect of pollution on both the environment and human health. This was evident in the parts of the Act cited by the Supreme Court, including a prohibition on granting dumping permits if the dumped substance would not be rendered harmless and would endanger human health (s. 9 (5)(a)) and the ability of the Minister to include terms in a permit in the interest of human life (s.10(2)).<sup>21</sup>

<sup>18</sup> *Russell v. the Queen*, [1882] UKPC 33 at 10, CPHA's Authorities, Tab 10.

<sup>19</sup> *Standard Sausage Co v. Lee*, 1933 CarswellBC 83 (B.C. C.A.) at paras 11, 41–46 [*Standard Sausage*], CPHA's Authorities, Tab 12. The Supreme Court, in *Labatt Breweries*, later acknowledged Parliament's "health jurisdiction" under P.O.G.G.: *Labatt Breweries v. Canada (Attorney General)*, [1980] 1 S.C.R. 914, 1979 CarswellNat 7 (S.C.C.) at para 17, CPHA's Authorities, Tab 3.

<sup>20</sup> *Ontario Hydro v. Ontario (Labour Relations Board)*, [1993] 3 SCR 327, 1993 CarswellOnt 1012 (S.C.C.) at paras 31 and 85 [*Ontario Hydro*], CPHA's Authorities, Tab 5. Lamer C.J., echoing the majority in his concurring decision, found that the "extent of the federal government's interest in nuclear power production is its interests in health, safety and security."

<sup>21</sup> *R v. Crown Zellerbach Canada Ltd.*, [1988] 1 S.C.R. 401 (S.C.C.) at 408-411 [*Crown Zellerbach*], Alberta's Authorities Vol 2, Tab 15.

26. The matter at issue in *Crown Zellerbach* is similar to what is at issue here – the regulation of specific activities with borderless, negative public health impacts. There the activity was dumping harmful materials into the ocean. Here it is emitting harmful GHGs into the atmosphere. In both cases “it is because of the inter-relatedness of the intra-provincial and extra-provincial aspects of the matter that it requires a single or uniform legislative treatment.” And there, as here, the matter was distinctive enough to be the subject of an international agreement; a fact the majority relied on in *Crown Zellerbach*.<sup>22</sup>

27. In each of the above cases federal legislation was upheld under the national concern branch even though the *source* of the matters – alcohol sales, adulteration of food, nuclear power generation, and dumping in marine waters– were local. These matters attained national dimensions because of the nature and national scope of their potential *effects*. Similarly, wherever their *source*, GHG emissions rise to the level of national concern not because of their sources or any direct impact in the vicinity of local sources, but because of their cumulative *effect* in causing global climate change, which comes with grave national and international public health risks.<sup>23</sup> P.O.G.G. empowers Parliament to meet this threat and overcome provincial inability. This ability to act nationally in furtherance of public health is one of the purposes and values of a federal system.

ii. *Co-operative federalism favors concurrent distribution of jurisdiction over the national public health threat of GHG emissions*

28. Public health, like the environment, is subject to concurrent jurisdiction shared between the federal and provincial governments. CPHA submits that all levels of government share a responsibility to protect and advance public health. While provinces have jurisdiction over front-line healthcare, Parliament has the authority to legislate to address national public health concerns and target public health evils.<sup>24</sup> Similarly, federal jurisdiction over the national dimensions of GHG emissions under the P.O.G.G. power does not impair the legislature’s power to regulate local GHG emissions.

<sup>22</sup> *Crown Zellerbach*, *ibid* at 434 and 436. There, the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, here, the Paris Agreement. These are both UN conventions.

<sup>23</sup> Canada’s factum at para 15.

<sup>24</sup> *R v. Hydro Québec*, [1997] 3 SCR 213 (S.C.C.) at para 153, Alberta’s Authorities, Vol 2, Tab 13; *Schneider*, *supra* note 15 at para 75, CPHA’s Authorities, Tab 10. According to *Canadian Blood Services*, *supra* note 16 at para 46, provincial jurisdiction comes from 92(7), 92(13) and the residual clause, while Parliament’s comes from 91(27) and P.O.G.G; *Québec (Procureur général) c. Canada (Procureur général)*, 2010 SCC 61 at para 57 [*Reference re Assisted Human Reproduction Act*], CPHA’s Authorities, Tab 7.

29. Modern jurisprudence has rejected the notion that there must be a plenary jurisdiction in one order of government or the other to deal with any legislative problem” and has long departed from the “watertight” compartments analysis of the Privy Council.<sup>25</sup> The double aspect doctrine recognizes that both Parliament and provincial legislatures can adopt valid legislation on a single subject:

The double aspect doctrine recognizes that both Parliament and the provincial legislatures can adopt valid legislation on a single subject depending on the perspective from which the legislation is considered, that is, depending on the various “aspects” of the “matter” in question.<sup>26</sup>

30. Thus, the modern model of federalism recognizes that there is significant overlap between the federal and provincial areas of jurisdiction, and provides that both governments should be permitted to legislate for their own valid purposes.<sup>27</sup> In these areas of overlapping jurisdiction, the modern trend is to “strike a balance between the federal and provincial governments, through the application of pith and substance analysis and a restrained application of federal paramountcy”.<sup>28</sup>

31. In the spirit of cooperative federalism, courts “should avoid blocking the application of measures which are taken to be enacted in furtherance of the public interest”.<sup>29</sup> Overlapping provincial and federal jurisdiction will coexist unless there is a conflict, construed narrowly as an impossibility of dual compliance.<sup>30</sup> The doctrine of interjurisdictional immunity, which the Supreme Court has confined in recent jurisprudence, does not apply. Any extension of interjurisdictional immunity to the matters at issue in this reference risks creating a “legal vacuum” – limiting Parliament’s authority over establishing minimum national standards for the reduction of greenhouse gas emissions where the provinces are unable or unwilling to regulate them. Such a legislative vacuum is “inimical to the very concept of the division of powers”.<sup>31</sup>

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<sup>25</sup> *Crown Zellerbach*, *supra* note 21 at 432-434.

<sup>26</sup> *Canadian Western Bank v. Alberta*, [2007] 2 S.C.R. 3 at para 30 [*Western Bank*], Alberta’s Authorities Vol 1, Tab 3.

<sup>27</sup> *PHS Community Services Society v. Canada (Attorney General)*, 2011 SCC 44 at para 62 [*PHS Community Services*], CPHA’s Authorities, Tab 6.

<sup>28</sup> *PHS Community Services*, *ibid* at para 65.

<sup>29</sup> *Western Bank*, *supra* note 26 at para 37.

<sup>30</sup> *Multiple Access Ltd. v. McCutcheon*, [1982] 2 SCR 161, 1982 CarswellOnt 128 (S.C.C.) at para 48 [*Multiple Access*], CPHA’s Authorities, Tab 4.

<sup>31</sup> *PHS Community Services*, *supra* note 27 at paras 64, 65 and 69.

32. The GGPPA does not prevent Alberta from implementing its own climate change plans and policies. Alberta has identified some of these plans and policies in its factum, but has not identified a single area of conflict with the GGPPA. Parliament has provided a minimum floor for carbon pricing. It is open to the provinces to do more. Dual compliance is not only possible, it furthers the shared objective of GHG mitigation.<sup>32</sup>

33. Finally, Parliament does not undermine its own jurisdiction in respect of the cumulative dimensions of GHG emissions by legislating a degree of discretion to provincial plans. In the recent *Reference re Pan-Canadian Securities Regulation*,<sup>33</sup> the Supreme Court defined “co-operative federalism” as an “interpretive aid” favoring “a harmonious reading of statutes enacted by the federal and provincial governments which allows for them to operate concurrently.” The Court unanimously upheld a federal regulatory scheme despite it deferring to existing provincial regulations. Just as the national securities legislation was validly enacted to address any risk that “slips through the cracks” and posed a threat to the Canadian economy as a whole, the GGPPA operates to address the interprovincial threats of climate change where a province chooses not to enact its own carbon pricing system.<sup>34</sup>

### **C. The GGPPA is a valid exercise of the criminal law power**

34. The GGPPA is a valid exercise of Parliament’s criminal law power pursuant to s. 91(27) of the *Constitution Act, 1867*. As noted above, the pith and substance of the GGPPA is to establish minimum national standards to reduce greenhouse gas emissions. In provinces without a compliant GHG emissions pricing scheme, the Act operates to impose charges on GHG sources and penalizes them if they do not pay the mandatory charge.

35. Criminal laws, have three elements: (1) a prohibition, (2) a penalty, and (3) a typically criminal purpose. This is not a restrictive definition; the Supreme Court has upheld various regulatory laws enacted under Parliament’s criminal law power.

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<sup>32</sup> Alberta’s Factum at paras 29-38; Moffet Affidavit, *supra* note 5 at para 102.

<sup>33</sup> *Reference re Pan-Canadian Securities Regulation*, 2018 SCC 48 [2018 *Securities Reference*], Alberta’s Authorities, Vol 3, Tab 23.

<sup>34</sup> 2018 *Securities Reference*, *ibid* at paras 17, 88 and 92.

*i. Protecting public health is a valid criminal law purpose*

36. Public health is a fundamental concern of the criminal law.<sup>35</sup> In *RJR MacDonald*, the Supreme Court held:

The scope of the federal power to create criminal legislation with respect to health matters is broad, and is circumscribed only by the requirements that the legislation must contain a prohibition accompanied by a penal sanction and must be directed at a legitimate public health evil. If a given piece of federal legislation contains these features, and if that legislation is not otherwise a “colourable” intrusion upon provincial jurisdiction, then it is valid as criminal law”.<sup>36</sup>

37. The GGPPA is not a “colourable” intrusion here given its public health and environmental purpose.

38. In *Hydro-Quebec*, the Supreme Court upheld as a valid criminal law the regulation of pollutants like Polychlorinated Biphenyls (“PCBs”) under the 1998 version of the *Canadian Environmental Protection Act* (“CEPA”).<sup>37</sup> This was for, among other reasons, its promotion of health.<sup>38</sup> Regulation of GHGs is critical for the same health reasons as PCBs. As the Federal Court of Appeal unanimously held in *Syncrude Canada Ltd. v. Attorney General of Canada*, “it is uncontroverted that GHGs are harmful to both health and the environment and as such, constitute an evil that justifies the exercise of the criminal law power.”<sup>39</sup>

*ii. The GGPPA is similar to other criminal laws that protect public health*

39. Just as CEPA has been upheld as a criminal law, GGPPA behaves like a criminal law. CEPA and the GGPPA have various similarities, including federal backstops, offences, penalties, enforcement and sentencing provisions:

(a) **Federal backstops:** CEPA has a federal backstop for international air and water pollution under which the Minister shall only recommend regulations if the

<sup>35</sup> The Supreme Court has held, with respect to criminal law, that “Public peace, order, security, health, morality: these are the ordinary though not exclusive ends served by that law”: *Reference re Validity of Section 5 (a) Dairy Industry Act*, [1949] SCR 1, 1948 CarswellNat 62 at para 145 (S.C.C.), CPHA’s Authorities, Tab 8.

<sup>36</sup> *RJR-MacDonald Inc. v. Canada*, 1995 CarswellQue 119 (S.C.C.) at para 32, CPHA’s Authorities, Tab 9.

<sup>37</sup> *Canadian Environmental Protection Act*, R.S.C., 1985, c. 16 (4th Supp.) [CEPA]. This Act was the precursor the *Canadian Environmental Protection Act, 1999*, S.C. 1999, c. 33., CPHA’s Factum, Schedule B, p. 1

<sup>38</sup> *Hydro-Quebec*, supra note 24.

<sup>39</sup> *Syncrude Canada Ltd. v. Attorney General of Canada*, 2016 FCA 160 at para 62 [*Syncrude*], Alberta’s Authorities, Vol I, Tab 17.

governments responsible for pollution sources cannot “prevent, control or correct the air pollution under its laws or does not do so”,<sup>40</sup>

- (b) **Inspections:** The procedure for inspections is similar under both the GGPPA and CEPA;<sup>41</sup>
- (c) **Offences/Penalties:** Like CEPA, the GGPPA contain offences, including regarding false or deceptive statements, and associated penalties;<sup>42</sup>
- (d) **Enforcement:** Both the GGPPA and CEPA designate enforcement officers and empower them to make orders<sup>43</sup> and charge for failure to comply;<sup>44</sup>
- (e) **Sentencing:** Both the GGPPA and CEPA emphasize deterrence, denunciation and the ‘polluter pays’ principle, while also referring to *Criminal Code* sentencing principles and aggravating factors. Both Acts also allow courts to make additional orders where there is non-compliance;<sup>45</sup>

iii. *Criminal laws may indirectly regulate and aim to modify behaviour*

40. Criminal laws may indirectly regulate an activity with a view to behaviour modification, as in the GGPPA. In *RJR-MacDonald*, the Supreme Court held that the *Tobacco Products Control Act*<sup>46</sup> was a valid criminal law, though the Act regulated the advertising and labeling of tobacco without prohibiting tobacco. The Supreme Court held that a valid criminal law purpose may exist, no matter how “circuitous” a path Parliament takes to reach its goal.<sup>47</sup>

41. In *Syncrude*,<sup>48</sup> the Federal Court of Appeal considered the constitutionality of s. 5(2) of the *Renewable Fuels Regulations*<sup>49</sup> pursuant to s. 140(2) CEPA. Like the GGPPA,

<sup>40</sup> CEPA, *supra* note 37, ss. 166 and 176(4)., CPHA’s Factum, Schedule B

<sup>41</sup> GGPPA, *supra* note 5, ss. 141 and 203(1); CEPA, *ibid*, s. 218(1)., CPHA’s Factum, Schedule B

<sup>42</sup> GGPPA, *ibid*, ss. 37(1), 131, 133, and 232(1); CEPA, *ibid* note 37, ss. 272 and 272.1., CPHA’s Factum, Schedule B

<sup>43</sup> GGPPA, *ibid*, ss. 201(3) and 215; CEPA, *ibid*, ss. 169 and 217(3). CPHA’s Factum, Schedule B

<sup>44</sup> GGPPA, *ibid*, 218 and 219; CEPA, *ibid*, ss. 95 and 98, CPHA’s Factum, Schedule B

<sup>45</sup> GGPPA, *ibid*, ss. 232(3), 247, 248, and 249; CEPA, *ibid*, ss. 272(3), 287, 287.1, and 29 CPHA’s Factum, Schedule B.

<sup>46</sup> S.C. 1988, c. 20. CPHA’s Factum, Schedule B

<sup>47</sup> *RJR-MacDonald Inc. v. Canada (Attorney General)*, *supra* note 36. The modern *Tobacco and Vaping Products Act* continues to regulate many minute aspects of the sale of tobacco products including the size of health warning labels, in a manner that is prescriptive rather than obviously prohibitive; *Tobacco and Vaping Products Act*, S.C. 1997 c. 13, s 15; *Tobacco Products Labelling Regulation*, SOR/2011-177, s 14(3).

<sup>48</sup> *Syncrude*, *supra* note 39.

<sup>49</sup> *Renewable Fuels Regulations*, SOR/2010-189.

this regulation combatted GHGs indirectly, by requiring diesel fuel produced, imported or sold in Canada to contain at least 2% renewable fuel. Syncrude argued that criminal law could not indirectly regulate to create demand for renewable fuels. The Court unanimously disagreed, holding that “Parliament may use indirect means to achieve its ends. A direct and total prohibition is not required.”<sup>50</sup> The Court in *Syncrude* also rejected the argument that the Regulation was simply an economic measure, holding that “all criminal law seeks to deter or modify behaviour, and it remains a valid use of the power if Parliament foresees behavioural responses, either in persons or in the economy.”<sup>51</sup>

42. In the same way, the GGPPA aims to reduce GHG emissions by prohibiting or regulating prescribed individuals from engaging in certain activities, unless they comply with the requirements of the fuel charge or output-based pricing system. The prohibition is accompanied by penalties, which are enforced in a similar manner as other statutes that have been upheld under the criminal law power. As in *Syncrude*, the criminal law power should be applied flexibly to deal with a pernicious public health problem.

*iv. The GGPPA may validly effect provincial property and civil rights*

Finally, criminal laws protecting public health may have incidental effects on property and civil rights in a province.<sup>52</sup> Use of the criminal law power to protect, among other things, the health of citizens, occupies broad area of concurrency.<sup>53</sup>

#### PART IV - RELIEF SOUGHT

43. CPHA requests that this Honourable Court make the recommendation that the GGPPA is *intra vires* the federal government’s power. CPHA requests that no costs be

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<sup>50</sup> *Syncrude*, *supra* note 39 at para 84, quoting the *Reference re Firearms Act (Can.)*, 2000 SCC 31 at paras 39 and 40, Alberta’s Authorities, Vol I, Tab 15.

<sup>51</sup> *Syncrude*, *ibid* at para 69.

<sup>52</sup> *Standard Sausage*, *supra* note 19 at para 66, cited with approval in *Hydro Quebec*, *supra* note 24 at para 129 and *RJR Macdonald*, *supra* note 36.

<sup>53</sup> *Standard Sausage*, *ibid*.

awarded either for or against CPHA in respect of its intervention.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 4<sup>th</sup> day of November, 2019.



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Robin A. Dean

Counsel for the CPHA

## SCHEDULE A – AUTHORITIES CITED

| TAB | AUTHORITY  |
|-----|--|
| 1.  | <i>Canadian Blood Services v. Manitoba (Human Rights Commission)</i> , 2011 MBQB 312                             |
| 2.  | <i>Delgamuukw v. British Columbia</i> , [1997] 3 SCR 1010 (SCC)  |
| 3.  | <i>Labatt Breweries v. Canada (Attorney General)</i> , [1980] 1 S.C.R. 914, 1979 CarswellNat 7 (SCC)             |
| 4.  | <i>Multiple Access Ltd. v. McCutcheon</i> , [1982] 2 SCR 161, 1982 CarswellOnt 128 (SCC)                         |
| 5.  | <i>Ontario Hydro v. Ontario (Labour Relations Board)</i> , [1993] 3 SCR 327, 1993 CarswellOnt 1012 (SCC)         |
| 6.  | <i>PHS Community Services v. Canada (Attorney General)</i> , 2011 SCC 44   |
| 7.  | <i>Québec (Procureur général) v. Canada (Procureur général)</i> , 2010 SCC 61 (SCC)                              |
| 8.  | <i>Reference re Validity of s. 5(a) of Dairy Industry Act (Canada)</i> , [1949] SCR 1, 1948 CarswellNat 62 (SCC) |
| 9.  | <i>RJR-MacDonald Inc. v. Canada (Attorney General)</i> , (1995) 3 SCR 199, 1995 CarswellQue 119                  |
| 10. | <i>Russell v. The Queen</i> , (1882) UKPC 33   |
| 11. | <i>Schneider v. The Queen</i> , [1982] 2 SCR 112, 1982 CarswellBC 241 (SCC)                                      |
| 12. | <i>Standard Sausage Co. v. Lee</i> , 1933 CarswellBC 83 (BC CA)  |
| 13. | The 2018 report of the Lancet Countdown on health and climate change   |

## SCHEDULE B – TEXT OF STATUTES, REGULATIONS & BY-LAWS

### *Canadian Environmental Protection Act, 1999, SC 1999, c 33*

#### **Report and remedial measures**

95 (1) Where there occurs or is a likelihood of a release into the environment of a substance specified on the List of Toxic Substances in Schedule 1 in contravention of a regulation made under section 92.1 or 93 or an order made under section 94, any person described in subsection (2) shall, as soon as possible in the circumstances,

(a) subject to subsection (4) and any regulations made under paragraph 97(b), notify an enforcement officer or any other person designated pursuant to the regulations and provide a written report on the matter to the enforcement officer or other person;

(b) take all reasonable measures consistent with the protection of the environment and public safety to prevent the release or, if it cannot be prevented, to remedy any dangerous condition or reduce or mitigate any danger to the environment or to human life or health that results from the release of the substance or may reasonably be expected to result if the substance is released; and

(c) make a reasonable effort to notify any member of the public who may be adversely affected by the release or likely release.

#### **Application**

(2) Subsection (1) applies to any person who

(a) owns or has the charge, management or control of a substance immediately before its release or its likely release into the environment; or

(b) causes or contributes to the release or increases the likelihood of the release.

#### **Report by property owner**

(3) Where there occurs a release of a substance as described in subsection (1), any person, other than a person described in subsection (2), whose property is affected by the release and who knows that it is a substance specified on the List of Toxic Substances in Schedule 1 shall, as soon as possible in the circumstances and subject to subsection (4), report the matter to an enforcement officer or to any person that is designated by regulation.

#### **Report to provincial official**

(4) Where there are in force, by or under the laws of a province or an aboriginal government, provisions that the Governor in Council, by regulation, declares to be adequate for dealing with a release described in subsection (1), a report required by paragraph (1)(a) or subsection (3) shall be made to a person designated by those provisions.

#### **Intervention by enforcement officer**

(5) Where any person fails to take any measures required under subsection (1), an enforcement officer may take those measures, cause them to be taken or direct any person referred to in subsection (2) to take them.

#### **Limitation on power of direction**

(6) A direction of an enforcement officer under subsection (5) that is inconsistent with a requirement imposed by or under any other Act of Parliament is void to the extent of the inconsistency.

#### **Access to property**

(7) Any enforcement officer or other person authorized or required to take any measures under subsection (1) or (5) may enter and have access to any place or property and may do any reasonable things that may be necessary in the circumstances.

#### **Personal liability**

(8) Any person, other than a person described in subsection (2), who provides assistance or advice in taking the measures required by subsection (1) or who takes any measures authorized under subsection (5) is not personally liable either civilly or criminally in respect of any act or omission in the course of providing assistance or advice or taking any measures under those subsections unless it is established that the person acted in bad faith.

...

#### **Recovery of reasonable costs and expenses by Her Majesty**

98 (1) Her Majesty in right of Canada may recover the costs and expenses of and incidental to taking any measures under subsection 95(5) from

(a) any person referred to in paragraph 95(2)(a); and

(b) any person referred to in paragraph 95(2)(b) to the extent that that person knowingly or negligently caused or contributed to the release.

#### **Reasonably incurred**

(2) The costs and expenses referred to in subsection (1) shall only be recovered to the extent that they can be established to have been reasonably incurred in the circumstances.

#### **Joint and several liability**

(3) Subject to subsection (4), the persons referred to in subsection (1) are jointly and severally liable or solidarily liable for the costs and expenses referred to in that subsection.

#### **Limitation**

(4) A person referred to in paragraph 95(2)(b) shall not be held liable under subsection (3) to an extent greater than the extent to which the person knowingly or negligently caused or contributed to the release.

**Procedure**

(5) A claim under this section may be sued for and recovered by Her Majesty in right of Canada with costs in proceedings brought or taken therefor in the name of Her Majesty in right of Canada in any court of competent jurisdiction.

**Recourse or indemnity**

(6) This section does not limit or restrict any right of recourse or indemnity that a person may have against any other person.

**Limitation period**

(7) Where events giving rise to a claim under this section occur, no proceedings in respect of the claim may be instituted after five years from the date on which the events occur or become evident to the Minister, whichever is later.

**Minister's certificate**

(8) A document purporting to have been issued by the Minister certifying the day on which the events giving rise to a claim under this section came to the knowledge of the Minister shall be received in evidence and, in the absence of any evidence to the contrary, the document shall be considered as proof of that fact without proof of the signature or of the official character of the person appearing to have signed the document and without further proof.

...

**DIVISION 6****International Air Pollution****Determination of international air pollution**

166 (1) Subject to subsection (4), the Minister shall act under subsections (2) and (3) only if the Ministers have reason to believe that a substance released from a source in Canada into the air creates, or may reasonably be anticipated to contribute to

- (a) air pollution in a country other than Canada; or
- (b) air pollution that violates, or is likely to violate, an international agreement binding on Canada in relation to the prevention, control or correction of pollution.

**Consultation with other governments**

- (2) If the source referred to in subsection (1) is not a federal source, the Minister shall
- (a) consult with the government responsible for the area in which the source is situated to determine whether that government can prevent, control or correct the air pollution under its laws; and

(b) if the government referred to in paragraph (a) can prevent, control or correct the air pollution, offer it an opportunity to do so.

#### **Ministerial action**

(3) If the source referred to in subsection (1) is a federal source or if the government referred to in paragraph (2)(a) cannot prevent, control or correct the air pollution under its laws or does not do so, the Minister shall take at least one of the following courses of action:

(a) on approval by the Governor in Council, publish a notice under subsection 56(1);  
or

(b) recommend regulations to the Governor in Council for the purpose of preventing, controlling or correcting the air pollution.

#### **Reciprocity with other country**

(4) If the air pollution referred to in paragraph (1)(a) is in a country where Canada does not have substantially the same rights with respect to the prevention, control or correction of air pollution as that country has under this Division, the Minister shall decide whether to act under subsections (2) and (3) or to take no action at all.

#### **Other factors**

(5) When recommending regulations under paragraph (3)(b), the Minister shall take into account comments made under subsection 168(2), notices of objection filed under subsection 332(2) and any report of a board of review submitted under subsection 340(1).

...

#### **Report and remedial measures**

169 (1) Where there occurs or there is a likelihood of a release into the air of a substance in contravention of a regulation made under section 167, any person described in subsection (2) shall, as soon as possible in the circumstances,

(a) subject to subsection (4) and the regulations, notify an enforcement officer or any other person designated pursuant to the regulations and provide a written report on the matter to the enforcement officer or other person;

(b) take all reasonable measures consistent with the protection of the environment and public safety to prevent the release or, if it cannot be prevented, to remedy any dangerous condition or reduce or mitigate any danger to the environment or to human life or health that results from the release of the substance or may reasonably be expected to result if the substance is released; and

(c) make a reasonable effort to notify any member of the public who may be adversely affected by the release or likely release.

#### **Application**

(2) Subsection (1) applies to any person who

(a) owns or has charge of a substance immediately before its release or its likely release into the air; or

(b) causes or contributes to the release or increases the likelihood of the release.

#### **Report by property owner**

(3) Where there occurs a release of a substance as described in subsection (1), any person, other than a person described in subsection (2), whose property is affected by the release shall, as soon as possible in the circumstances and subject to subsection (4), report the matter to an enforcement officer or to any person that is designated by regulation.

#### **Report to official**

(4) Where there are in force, by or under the laws of a province or an aboriginal government, provisions that the Governor in Council, by regulation, declares to be adequate for dealing with a release described in subsection (1), a report required by paragraph (1)(a) or subsection (3) shall be made to a person designated by those provisions.

#### **Intervention by enforcement officer**

(5) Where a person fails to take any measures required under subsection (1), an enforcement officer may take those measures, cause them to be taken or direct any person referred to in subsection (2) to take them.

#### **Limitation on power of direction**

(6) Any direction of an enforcement officer under subsection (5) that is inconsistent with a requirement imposed by or under any other Act of Parliament is void to the extent of the inconsistency.

#### **Access to property**

(7) Any enforcement officer or other person authorized or required to take any measures under subsection (1) or (5) may enter and have access to any place or property and may do any reasonable things that may be necessary in the circumstances.

#### **Immunity**

(8) Any person, other than a person described in subsection (2), who provides assistance or advice in taking the measures required by subsection (1) or who takes any measures authorized under subsection (5) is not personally liable either civilly or criminally in respect of any act or omission in the course of providing assistance or advice or taking any measures under those subsections unless it is established that the person acted in bad faith.

...

#### **Reciprocity with other country**

176 (4) If the water pollution referred to in paragraph (1)(a) is in a country where Canada does not have substantially the same rights with respect to the prevention, control or

correction of water pollution as that country has under this Division, the Minister shall decide whether to act under subsections (2) and (3).

...

#### **Powers of enforcement officers**

217(3) For the purposes of this Act and the regulations, enforcement officers have all the powers of a peace officer, but the Minister may specify limits on those powers when designating any person or class of persons.

...

#### **Inspection**

218 (1) Subject to subsection (2), for the purposes of this Act and the regulations, an enforcement officer may, at any reasonable time, enter and inspect any place if the enforcement officer has reasonable grounds to believe that

- (a) there can be found in the place a substance to which this Act applies or a product containing such a substance;
- (b) fuels to which this Act applies are being or have been produced or blended, or can be found, in the place;
- (c) a cleaning product or water conditioner, as defined in section 116, is being or has been produced or can be found in the place;
- (d) regulations made under section 209 apply to or in respect of the place;
- (e) the place is a source in respect of which regulations have been made under section 167 or 177 or a place in respect of which regulations have been made under section 200;
- (f) a substance is being loaded for the purpose of disposal at sea or is being disposed of at sea;
- (g) any vehicle, engine or equipment of a class for which standards for emissions have been prescribed that is owned by or is on the premises of a company or a consignee of imported vehicles or engines or imported equipment can be found in the place;
- (h) any component to be used in the manufacture of a vehicle, engine or equipment for which standards for emissions have been prescribed can be found in the place;
- (i) any record in relation to the design, manufacture, testing and field performance of a vehicle, engine or equipment in so far as it relates to emissions can be found in the place; or

(j) any books, records, electronic data or other documents relevant to the administration of this Act can be found in the place.

...

### **Offence — persons**

#### **272 (1) Every person commits an offence who**

(a) contravenes subsection 16(3) or (4), any of subsections 81(1), (3), (4), (10), (11) and (14), 84(2) and 96(3) and (4), section 101, any of subsections 106(1), (3), (4), (10) and (11) and 109(2), section 117 or 123, any of subsections 124(1), (2) and (3), 125(1), (2), (3), (4) and (5), 126(1) and (2) and 139(1), section 142 or 144, subsection 150(3) or (4), section 152, subsection 153(1), section 154, subsection 155(5), section 171 or 181, subsection 185(1), 186(2), 189(1), 202(3) or (4) or 213(3) or (4), paragraph 228(a) or subsection 238(1);

(b) fails to comply with an obligation set out in section 70, 86, 95 or 111, subsection 169(1), 172(1), 179(1), 182(1), 201(1) or 212(1);

(c) contravenes a prohibition imposed under subsection 82(1), paragraph 84(1)(b), subsection 107(1), paragraph 109(1)(b) or subsection 186(1) or 225(4);

(d) contravenes a condition of a permission granted under paragraph 84(1)(a) or 109(1)(a);

(e) contravenes an interim order made under subsection 94(1), 173(1), 183(1) or 200.1(1);

(f) fails to comply with a direction given under section 99, 119 or 148;

(g) knowingly contravenes paragraph 228(b);

(h) contravenes any provision of the regulations designated by regulations made under section 286.1 for the purpose of this paragraph;

(i) contravenes an agreement as defined in section 295;

(j) contravenes an order, direction or decision of a court made under this Act;

(k) knowingly, with respect to any matter related to this Act or the regulations, provides any person with any false or misleading information, results or samples; or

(l) knowingly, with respect to any matter related to this Act or the regulations, files a document that contains false or misleading information.

### **Penalty — individuals**

(2) Every individual who commits an offence under subsection (1) is liable,

(a) on conviction on indictment,

(i) for a first offence, to a fine of not less than \$15,000 and not more than \$1,000,000 or to imprisonment for a term of not more than three years, or to both, and

(ii) for a second or subsequent offence, to a fine of not less than \$30,000 and not more than \$2,000,000 or to imprisonment for a term of not more than three years, or to both; or

(b) on summary conviction,

(i) for a first offence, to a fine of not less than \$5,000 and not more than \$300,000 or to imprisonment for a term of not more than six months, or to both, and

(ii) for a second or subsequent offence, to a fine of not less than \$10,000 and not more than \$600,000 or to imprisonment for a term of not more than six months, or to both.

#### **Penalty — other persons**

(3) Every person, other than an individual or a corporation referred to in subsection (4), that commits an offence under subsection (1) is liable,

(a) on conviction on indictment

(i) for a first offence, to a fine of not less than \$500,000 and not more than \$6,000,000, and

(ii) for a second or subsequent offence, to a fine of not less than \$1,000,000 and not more than \$12,000,000; or

(b) on summary conviction,

(i) for a first offence, to a fine of not less than \$100,000 and not more than \$4,000,000, and

(ii) for a second or subsequent offence, to a fine of not less than \$200,000 and not more than \$8,000,000.

#### **Penalty — small revenue corporations**

(4) Every corporation that commits an offence under subsection (1) and that the court determines under section 272.3 to be a small revenue corporation is liable,

(a) on conviction on indictment,

(i) for a first offence, to a fine of not less than \$75,000 and not more than \$4,000,000, and

(ii) for a second or subsequent offence, to a fine of not less than \$150,000 and not more than \$8,000,000; or

(b) on summary conviction,

(i) for a first offence, to a fine of not less than \$25,000 and not more than \$2,000,000, and

(ii) for a second or subsequent offence, to a fine of not less than \$50,000 and not more than \$4,000,000.

### **Offence — persons**

272.1 (1) Every person commits an offence who

(a) contravenes any provision of this Act, other than a provision the contravention of which is an offence under subsection 272(1);

(b) fails to comply with an obligation arising from this Act, a requirement imposed under this Act or a request made under this Act, other than an obligation, a requirement or a request the failure to comply with is an offence under 272(1);

(c) contravenes a prohibition arising from this Act, other than a prohibition the contravention of which is an offence under subsection 272(1);

(d) contravenes a condition of any permission granted under this Act, other than a condition of a permission the contravention of which is an offence under subsection 272(1);

(e) fails to comply with a direction given under this Act, other than a direction the failure to comply with is an offence under 272(1);

(f) contravenes any provision of the regulations, other than a provision the contravention of which is an offence under subsection 272(1) or 272.2(1);

(g) negligently, with respect to any matter related to this Act or the regulations, provides any person with any false or misleading information, results or samples; or

(h) negligently, with respect to any matter related to this Act or the regulations, files a document that contains false or misleading information.

### **Penalty — individuals**

(2) Every individual who commits an offence under subsection (1) is liable,

(a) on conviction on indictment,

(i) for a first offence, to a fine of not more than \$100,000, and

(ii) for a second or subsequent offence, to a fine of not more than \$200,000;  
or

(b) on summary conviction,

(i) for a first offence, to a fine of not more than \$25,000, and

(ii) for a second or subsequent offence, to a fine of not more than \$50,000.

**Penalty — other persons**

(3) Every person, other than an individual or a corporation referred to in subsection (4), that commits an offence under subsection (1) is liable,

(a) on conviction on indictment,

(i) for a first offence, to a fine of not more than \$500,000, and

(ii) for a second or subsequent offence, to a fine of not more than \$1,000,000;  
or

(b) on summary conviction,

(i) for a first offence, to a fine of not more than \$250,000, and

(ii) for a second or subsequent offence, to a fine of not more than \$500,000.

**Penalty — small revenue corporations**

(4) Every corporation that commits an offence under subsection (1) and that the court determines under section 272.3 to be a small revenue corporation is liable,

(a) on conviction on indictment,

(i) for a first offence, to a fine of not more than \$250,000, and

(ii) for a second or subsequent offence, to a fine of not more than \$500,000;  
or

(b) on summary conviction,

(i) for a first offence, to a fine of not more than \$50,000, and

(ii) for a second or subsequent offence, to a fine of not more than \$100,000.

...

**Fundamental purpose of sentencing**

287 The fundamental purpose of sentencing for offences under this Act is to contribute, in light of the significant and many threats to the environment and to human health and to the importance of a healthy environment to the well-being of Canadians, to respect for the law protecting the environment and human health through the imposition of just sanctions that have as their objectives

(a) to deter the offender and any other person from committing offences under this Act;

(b) to denounce unlawful conduct that damages or creates a risk of damage to the environment or harms or creates a risk of harm to human health; and

(c) to reinforce the “polluter pays” principle by ensuring that offenders are held responsible for effective clean-up and environmental restoration.

### **Sentencing principles**

287.1 (1) In addition to the principles and factors that the court is otherwise required to consider, including those set out in sections 718.1 to 718.21 of the Criminal Code, the court shall consider the following principles when sentencing a person who is convicted of an offence under this Act:

(a) the amount of the fine should be increased to account for every aggravating factor associated with the offence, including the aggravating factors set out in subsection (2); and

(b) the amount of the fine should reflect the gravity of each aggravating factor associated with the offence.

### **Aggravating factors**

(2) The aggravating factors are the following:

(a) the offence caused damage or risk of damage to the environment or environmental quality;

(b) the offence caused damage or risk of damage to any unique, rare, particularly important or vulnerable component of the environment;

(c) the offence caused harm or risk of harm to human health;

(d) the damage or harm caused by the offence is extensive, persistent or irreparable;

(e) the offender committed the offence intentionally or recklessly;

(f) the offender failed to take reasonable steps to prevent the commission of the offence despite having the financial means to do so;

(g) by committing the offence or failing to take action to prevent its commission, the offender increased revenue or decreased costs or intended to increase revenue or decrease costs;

(h) the offender committed the offence despite having been warned by an enforcement officer of the circumstances that subsequently became the subject of the offence;

(i) the offender has a history of non-compliance with federal or provincial legislation that relates to environmental or wildlife conservation or protection; and

(j) after the commission of the offence, the offender

- (i) attempted to conceal its commission,
- (ii) failed to take prompt action to prevent, mitigate or remediate its effects,  
or
- (iii) failed to take prompt action to reduce the risk of committing similar offences in the future.

#### **Absence of aggravating factor**

(3) The absence of an aggravating factor set out in subsection (2) is not a mitigating factor.

#### **Meaning of damage**

(4) For the purposes of paragraphs (2)(a), (b) and (d), damage includes loss of use value and non-use value.

#### **Reasons**

(5) If the court is satisfied of the existence of one or more of the aggravating factors set out in subsection (2) but decides not to increase the amount of the fine because of that factor, the court shall give reasons for that decision.

...

#### **Orders of court**

291 (1) Where an offender has been convicted of an offence under this Act, in addition to any other punishment that may be imposed under this Act, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order having any or all of the following effects:

- (a) prohibiting the offender from doing any act or engaging in any activity that may result in the continuation or repetition of the offence;
- (b) directing the offender to take any action that the court considers appropriate to remedy or avoid any harm to the environment that results or may result from the act or omission that constituted the offence;
- (c) directing the offender to prepare and implement a pollution prevention plan or an environmental emergency plan;
- (d) directing the offender to carry out environmental effects monitoring in the manner established by the Minister or directing the offender to pay, in the manner prescribed by the court, an amount for the purposes of environmental effects monitoring;
- (e) directing the offender to implement an environmental management system that meets a recognized Canadian or international standard;
- (f) directing the offender to have an environmental audit conducted by a person of a class and at the times specified by the court and directing the offender to remedy any deficiencies revealed during the audit;

(f.1) directing the offender to pay to Her Majesty in right of Canada an amount of money that the court considers appropriate for the purpose of promoting the conservation or protection of the environment;

(g) directing the offender to publish, in the manner specified by the court, the facts relating to the commission of the offence and the details of the punishment imposed, including any orders made under this subsection;

(h) directing the offender to notify, at the offender's own cost and in the manner specified by the court, any person aggrieved or affected by the offender's conduct of the facts relating to the commission of the offence and of the details of the punishment imposed, including any orders made under this subsection;

(i) directing the offender to post any bond or pay any amount of money into court that will ensure compliance with any order made under this section;

(j) directing the offender to submit to the Minister, on application by the Minister made within three years after the date of conviction, any information with respect to the offender's activities that the court considers appropriate and just in the circumstances;

(k) directing the offender to compensate any person, monetarily or otherwise, in whole or in part, for the cost of any remedial or preventive action taken, caused to be taken or to be taken as a result of the act or omission that constituted the offence, including costs of assessing appropriate remedial or preventive action;

(l) directing the offender to perform community service, subject to any reasonable conditions that may be imposed in the order;

(m) [Repealed, 2009, c. 14, s. 85]

(n) directing the offender to pay, in the manner prescribed by the court, an amount for the purposes of conducting research into the ecological use and disposal of the substance in respect of which the offence was committed or research relating to the manner of carrying out environmental effects monitoring;

(o) directing the offender to pay, in the manner prescribed by the court, an amount to environmental, health or other groups to assist in their work in the community where the offence was committed;

(p) directing the offender to pay, in the manner prescribed by the court, an amount to an educational institution including for scholarships for students enrolled in studies related to the environment;

(q) requiring the offender to comply with any other conditions that the court considers appropriate in the circumstances for securing the offender's good conduct and for deterring the offender and any other person from committing offences under this Act;

(r) requiring the offender to surrender to the Minister any permit or other authorization issued under this Act to the offender; and

(s) prohibiting the offender from applying for any new permit or other authorization under this Act during any period that the court considers appropriate.

#### **Publication**

(2) If an offender fails to comply with an order made under paragraph (1)(g), the Minister may, in the manner that the court directed the offender to do so, publish the facts relating to the commission of the offence and the details of the punishment imposed and recover the costs of publication from the offender.

#### **Debt due to Her Majesty**

(3) If the court makes an order under paragraph (1)(f.1) or (k) directing an offender to pay an amount to Her Majesty in right of Canada, or if the Minister incurs publication costs under subsection (2), the amount or the costs, as the case may be, constitute a debt due to Her Majesty in right of Canada and may be recovered in any court of competent jurisdiction.

#### **Enforcement**

(4) If the court makes an order under paragraph (1)(k) directing an offender to pay an amount to a person, other than to Her Majesty in right of Canada, and the amount is not paid without delay, the person may, by filing the order, enter as a judgment, in the superior court of the province in which the trial was held, the amount ordered to be paid, and that judgment is enforceable against the offender in the same manner as if it were a judgment rendered against the offender in that court in civil proceedings.

#### **Cancellation or suspension of permits, etc.**

(5) If the court makes an order under paragraph (1)(r), any permit or other authorization to which the order relates is cancelled unless the court makes an order suspending it for any period that the court considers appropriate.

#### **Coming into force and duration of order**

(6) An order made under subsection (1) comes into force on the day on which it is made or on any other day that the court may determine and shall not continue in force for more than three years after that day unless the court provides otherwise in the order.

### ***Greenhouse Gas Pollution Pricing Act, S.C. 2018, c 12***

#### **Preamble**

Whereas there is broad scientific consensus that anthropogenic greenhouse gas emissions contribute to global climate change;

Whereas recent anthropogenic emissions of greenhouse gases are at the highest level in history and present an unprecedented risk to the environment, including its biological diversity, to human health and safety and to economic prosperity;

Whereas impacts of climate change, such as coastal erosion, thawing permafrost, increases in heat waves, droughts and flooding, and related risks to critical infrastructures and food security are already being felt throughout Canada and are impacting Canadians, in particular the Indigenous peoples of Canada, low-income citizens and northern, coastal and remote communities;

Whereas Parliament recognizes that it is the responsibility of the present generation to minimize impacts of climate change on future generations;

Whereas the United Nations, Parliament and the scientific community have identified climate change as an international concern which cannot be contained within geographic boundaries;

Whereas Canada has ratified the United Nations Framework Convention on Climate Change, done in New York on May 9, 1992, which entered into force in 1994, and the objective of that Convention is the stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system;

Whereas Canada has also ratified the Paris Agreement, done in Paris on December 12, 2015, which entered into force in 2016, and the aims of that Agreement include holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change;

Whereas the Government of Canada is committed to achieving Canada's Nationally Determined Contribution – and increasing it over time – under the Paris Agreement by taking comprehensive action to reduce emissions across all sectors of the economy, accelerate clean economic growth and build resilience to the impacts of climate change;

Whereas it is recognized in the Pan-Canadian Framework on Clean Growth and Climate Change that climate change is a national problem that requires immediate action by all governments in Canada as well as by industry, non-governmental organizations and individual Canadians;

Whereas greenhouse gas emissions pricing is a core element of the Pan-Canadian Framework on Clean Growth and Climate Change;

Whereas behavioural change that leads to increased energy efficiency, to the use of cleaner energy, to the adoption of cleaner technologies and practices and to innovation is necessary for effective action against climate change;

Whereas the pricing of greenhouse gas emissions on a basis that increases over time is an appropriate and efficient way to create incentives for that behavioural change;

Whereas greenhouse gas emissions pricing reflects the “polluter pays” principle;

Whereas some provinces are developing or have implemented greenhouse gas emissions pricing systems;

Whereas the absence of greenhouse gas emissions pricing in some provinces and a lack of stringency in some provincial greenhouse gas emissions pricing systems could contribute to significant deleterious effects on the environment, including its biological diversity, on human health and safety and on economic prosperity;

And whereas it is necessary to create a federal greenhouse gas emissions pricing scheme to ensure that, taking provincial greenhouse gas emissions pricing systems into account, greenhouse gas emissions pricing applies broadly in Canada;

...

#### **Charge — false declaration**

37 (1) If a particular person delivers fuel in a listed province to another person at a particular time, if an exemption certificate applies in respect of the delivery in accordance with subsection 36(1) and if the declaration referred to in paragraph 36(1)(b) is, at the particular time, false, the following rules apply:

(a) the other person must pay to Her Majesty in right of Canada a charge in respect of the fuel and the listed province in the amount determined under section 40;

(b) the other person is liable to pay, in addition to any other penalty under this Part, a penalty equal to 25% of the amount of the charge under paragraph (a) payable in respect of the fuel; and

(c) if the particular person knows, or ought to have known, that the declaration is, at the particular time, false, the particular person and the other person are jointly and severally, or solidarily, liable for the payment of the charge in respect of the fuel and the listed province under paragraph (a), the penalty under paragraph (b) and any related interest and penalties.

...

#### **False statements or omissions**

131 Every person that knowingly, or under circumstances amounting to gross negligence, makes or participates in, assents to or acquiesces in the making of a false statement or omission in a return, application, form, certificate, statement, invoice or answer (each of which is in this section referred to as a "return") is liable to pay a penalty of the greater of \$500 and 25% of the total of

(a) if the false statement or omission is relevant to the determination of an amount payable under this Part by the person, the amount, if any, by which

(i) the amount payable exceeds

(ii) the amount that would be payable by the person if the amount payable were determined on the basis of the information provided in the return, and

(b) if the false statement or omission is relevant to the determination of a rebate or any other payment that may be obtained under this Part, the amount, if any, by which

(i) the amount that would be the rebate or other payment payable to the person if the rebate or other payment were determined on the basis of the information provided in the return exceeds

(ii) the amount of the rebate or other payment payable to the person.

...

### **Offences for false or deceptive statement**

133 (1) Every person commits an offence that

(a) makes, or participates in, assents to or acquiesces in the making of, a false or deceptive statement in a return, application, certificate, statement, document, record or answer filed or made as required under this Part;

(b) for the purposes of evading payment of any amount payable under this Part, or obtaining a rebate or other payment payable under this Part to which the person is not entitled,

(i) destroys, alters, mutilates, conceals or otherwise disposes of any records of a person, or

(ii) makes, or assents to or acquiesces in the making of, a false or deceptive entry, or omits, or assents to or acquiesces in the omission, to enter a material particular in the records of a person;

(c) intentionally, in any manner, evades or attempts to evade compliance with this Part or payment of an amount payable under this Part;

(d) intentionally, in any manner, obtains or attempts to obtain a rebate or other payment payable under this Part to which the person is not entitled; or

(e) conspires with any person to commit an offence described in any of paragraphs (a) to (d).

### **Punishment**

(2) Every person that commits an offence under subsection (1) is guilty of an offence punishable on summary conviction and, in addition to any penalty otherwise provided, is liable to

(a) a fine of not less than 50%, and not more than 200%, of the amount payable that was sought to be evaded, or of the rebate or other payment sought, or, if the amount that was sought to be evaded cannot be ascertained, a fine of not less than \$2,000 and not more than \$40,000;

(b) imprisonment for a term not exceeding two years; or

(c) both a fine referred to in paragraph (a) and imprisonment for a term not exceeding two years.

#### **Prosecution on indictment**

(3) Every person that is charged with an offence described in subsection (1) may, at the election of the Attorney General of Canada, be prosecuted on indictment and, if convicted, is, in addition to any penalty otherwise provided, liable to

(a) a fine of not less than 100%, and not more than 200%, of the amount payable that was sought to be evaded, or of the rebate or other payment sought, or, if the amount that was sought to be evaded cannot be ascertained, a fine of not less than \$5,000 and not more than \$100,000;

(b) imprisonment for a term not exceeding five years; or

(c) both a fine referred to in paragraph (a) and imprisonment for a term not exceeding five years.

#### **Penalty on conviction**

(4) A person that is convicted of an offence under this section is not liable to pay a penalty imposed under this Part for the same evasion or attempt unless a notice of assessment for that penalty was issued before the information or complaint giving rise to the conviction was laid or made.

#### **Stay of appeal**

(5) If, in any appeal under this Part, substantially the same facts are at issue as those that are at issue in a prosecution under this section, the Minister may file a stay of proceedings with the Tax Court of Canada and, upon that filing, the proceedings before the Tax Court of Canada are stayed pending a final determination of the outcome of the prosecution.

...

### **SUBDIVISION K**

#### **Inspections**

##### **By whom**

141 (1) A person authorized by the Minister to do so may, at all reasonable times, for any purpose related to the administration or enforcement of this Part, inspect, audit or examine the records, processes, property or premises of a person that may be relevant in determining the obligations of that or any other person under this Part, or the amount of any rebate to which that or any other person is entitled under this Part and whether that person or any other person is in compliance with this Part.

##### **Powers of authorized person**

(2) For the purposes of an inspection, audit or examination, the authorized person may

(a) enter any place in which the authorized person reasonably believes the person keeps or should keep records, carries on any activity to which this Part applies or does anything in relation to that activity; and

(b) require any individual to be present during the inspection, audit or examination and require that individual to answer all proper questions and to give to the authorized person all reasonable assistance.

#### **Prior authorization**

(3) If any place referred to in paragraph (2)(a) is a dwelling-house, the authorized person may not enter that dwelling-house without the consent of the occupant, except under the authority of a warrant issued under subsection (4).

#### **Warrant to enter dwelling-house**

(4) A judge may issue a warrant authorizing a person to enter a dwelling-house subject to the conditions specified in the warrant if, on ex parte application by the Minister, a judge is satisfied by information on oath that

(a) there are reasonable grounds to believe that the dwelling-house is a place referred to in paragraph (2)(a);

(b) entry into the dwelling-house is necessary for any purpose related to the administration or enforcement of this Part; and

(c) entry into the dwelling-house has been, or there are reasonable grounds to believe that entry will be, refused.

#### **Orders if entry not authorized**

(5) If the judge is not satisfied that entry into the dwelling-house is necessary for any purpose related to the administration or enforcement of this Part, the judge may, to the extent that access was or may be expected to be refused and that a record or property is or may be expected to be kept in the dwelling-house,

(a) order the occupant of the dwelling-house to provide a person with reasonable access to any record or property that is or should be kept in the dwelling-house; and

(b) make any other order that is appropriate in the circumstances to carry out the purposes of this Part.

#### **Definition of dwelling-house**

(6) In this section, dwelling-house means the whole or any part of a building or structure that is kept or occupied as a permanent or temporary residence, and includes

(a) a building within the curtilage of a dwelling-house that is connected to it by a doorway or by a covered and enclosed passageway; and

(b) a unit that is designed to be mobile and to be used as a permanent or temporary residence and that is being used as such a residence.

...

### **Powers of enforcement officers**

201(3) For the purposes of this Part, enforcement officers have all the powers of a peace officer, but the Minister may specify limits on those powers when designating any individuals or class of individuals.

...

### **Authority to enter**

203 (1) An enforcement officer who has reasonable grounds to believe that anything to which this Part applies — including a book, record, piece of electronic data or other document — is located in a place or that an activity regulated by this Part is conducted in a place, may, for the purpose of verifying compliance with this Part, enter the place and require any individual to be present.

...

### **Order**

215 (1) If an enforcement officer believes on reasonable grounds that there is or is likely to be a contravention of this Part, they may issue an order directing a person to

- (a) stop doing something that is or is likely to be in contravention of this Part or cause it to be stopped;
- (b) take any measure that is necessary in order to comply with this Part or to mitigate the effects of non-compliance; and
- (c) take any other measure that the enforcement officer considers necessary to facilitate compliance with the order including
  - (i) maintaining records on any relevant matter,
  - (ii) reporting periodically to the enforcement officer, and
  - (iii) submitting to the enforcement officer any information, proposal or plan specified by the enforcement officer and setting out any action to be taken by the person with respect to the subject matter of the order.

### **Notice**

(2) An order must be provided in the form of a written notice and must set out

- (a) the name of each person to whom it is directed;
- (b) the provision of this Part or the regulations that is alleged to have been or that is likely to be contravened;
- (c) the relevant facts surrounding the alleged contravention;

- (d) whatever it is to be stopped or the measures to be taken;
- (e) the time or the day when each measure is to begin or the period during which it is to be carried out;
- (f) subject to subsection (3), the duration of the order;
- (g) a statement that a request for a review may be made to the Chief Review Officer; and
- (h) the period within which a request for a review may be made.

#### **Duration of order**

- (3) The maximum duration of an order is 180 days.

#### **Statutory Instruments Act**

- (4) An order is not a statutory instrument for the purposes of the Statutory Instruments Act.

...

#### **Intervention by enforcement officer**

218 (1) If any person to whom an order is directed fails to take any measures specified in the order, an enforcement officer may take the measures or authorize a third party to take the measures.

#### **Access to property**

(2) An enforcement officer or third party that is authorized to take measures under subsection (1) may enter and have access to any place or property, other than a dwelling-house, and may do any reasonable things that may be necessary in the circumstances.

#### **Immunity**

(3) If a third party is authorized to take measures under subsection (1), no action or other proceeding of a civil nature may be brought against the third party in respect of any act or omission committed in good faith in taking those measures.

#### **Recovery of reasonable costs and expenses by Her Majesty**

219 (1) Her Majesty in right of Canada may recover the costs and expenses of and incidental to taking any measures under subsection 218(1) from any person to whom the order is directed.

#### **Reasonably incurred**

(2) The costs and expenses referred to in subsection (1) must only be recovered to the extent that they can be established to have been reasonably incurred in the circumstances.

#### **Liability**

(3) If the order is directed to more than one person, they are jointly and severally, or solidarily, liable for the costs and expenses referred to in subsection (1).

#### **Procedure**

(4) A claim under this section may be sued for and recovered by Her Majesty in right of Canada with costs in proceedings brought or taken in respect of the claim in the name of Her Majesty in right of Canada in any court of competent jurisdiction.

#### **Recourse or indemnity**

(5) This section does not limit or restrict any right of recourse or indemnity that a person may have against any other person.

#### **Limitation period**

(6) If events giving rise to a claim under this section occur, no proceedings in respect of the claim may be instituted after five years from the date on which the events occur or came to the knowledge of the Minister, whichever is later.

#### **Minister's certificate**

(7) A document purporting to have been issued by the Minister certifying the day on which the events giving rise to a claim under this section came to the knowledge of the Minister must be received in evidence and, in the absence of any evidence to the contrary, the document must be considered as proof of that fact without proof of the signature or of the official character of the person appearing to have signed the document.

...

#### **Offences**

232 (1) Every person commits an offence who

- (a) contravenes section 208 or subsection 217(1) or 225(4);
- (b) knowingly contravenes section 209;
- (c) contravenes any provision of a regulation that is designated by regulations made under section 246;
- (d) contravenes an order of a court made under this Part;
- (e) knowingly, with respect to any matter related to this Part, provides any person with any false or misleading information or samples;
- (f) knowingly, with respect to any matter related to this Part, files a document that contains false or misleading information; or
- (g) knowingly, destroys, alters, mutilates, conceals or otherwise disposes of any records that are kept and retained under this Part.

...

### **Penalty — other persons**

232(3) Every person, other than an individual or an organization referred to in subsection (4), that commits an offence under subsection (1) is liable,

(a) on conviction on indictment,

(i) for a first offence, to a fine of not less than \$500,000 and not more than \$6,000,000, and

(ii) for a second or subsequent offence, to a fine of not less than \$1,000,000 and not more than \$12,000,000; or

(b) on summary conviction,

(i) for a first offence, to a fine of not less than \$100,000 and not more than \$4,000,000, and

(ii) for a second or subsequent offence, to a fine of not less than \$200,000 and not more than \$8,000,000.

...

### **Fundamental purpose**

247 The fundamental purpose of sentencing for offences under this Part is to contribute — in light of the risks posed by climate change to the environment, including its biological diversity, to human health and safety and to economic prosperity — to respect for laws related to the pricing of greenhouse gas emissions through the imposition of just sanctions that have as their objectives

(a) the deterrence of the offender and any other person from committing offences under this Part;

(b) the denunciation of the unlawful conduct; and

(c) the reinforcement of the “polluter pays” principle.

### **Principles**

248 (1) In addition to the principles and factors that the court is otherwise required to consider, including those set out in sections 718.1 to 718.21 of the Criminal Code, the court must consider the following principles when sentencing a person that is convicted of an offence under this Part:

(a) the amount of the fine should be increased to account for every aggravating factor associated with the offence, including the aggravating factors set out in subsection (2); and

(b) the amount of the fine should reflect the gravity of each aggravating factor associated with the offence.

**Aggravating factors**

(2) The aggravating factors are the following:

- (a) the offender committed the offence intentionally or recklessly;
- (b) the offender failed to take reasonable steps to prevent the commission of the offence despite having the financial means to do so;
- (c) by committing the offence or failing to take action to prevent its commission, the offender increased revenue or decreased costs or intended to increase revenue or decrease costs;
- (d) the offender committed the offence despite having been warned by an enforcement officer of the circumstances that subsequently became the subject of the offence;
- (e) the offender has a history of non-compliance with federal or provincial legislation that relates to the control or pricing of greenhouse gas emissions; and
- (f) after the commission of the offence, the offender
  - (i) attempted to conceal its commission,
  - (ii) failed to take prompt action to prevent, mitigate or remediate its effects, or
  - (iii) failed to take prompt action to reduce the risk of committing similar offences in the future.

**Absence of aggravating factor**

(3) The absence of an aggravating factor set out in subsection (2) is not a mitigating factor.

**Reasons**

(4) If the court is satisfied of the existence of one or more of the aggravating factors set out in subsection (2) but decides not to increase the amount of the fine because of that factor, the court must give reasons for that decision.

**Orders of court**

249 (1) If an offender has been convicted of an offence under this Part, in addition to any other punishment that may be imposed under this Part, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order having any or all of the following effects:

- (a) prohibiting the offender from doing any act or engaging in any activity that may result in the continuation or repetition of the offence;
- (b) directing the offender to implement a greenhouse gas emissions control or reduction system that meets a recognized Canadian or international standard;

(c) directing the offender to have an audit conducted by a person of a class and at the times specified by the court and directing the offender to remedy any deficiencies revealed during the audit;

(d) directing the offender to pay to Her Majesty in right of Canada an amount of money that the court considers appropriate for the purpose of promoting the control or reduction of greenhouse gas emissions or mitigating the effects of climate change caused by those emissions;

(e) directing the offender to publish, in the manner specified by the court, the facts relating to the commission of the offence and the details of the punishment imposed, including any orders made under this subsection;

(f) directing the offender to notify, at the offender's own cost and in the manner specified by the court, any person aggrieved or affected by the offender's conduct of the facts relating to the commission of the offence and of the details of the punishment imposed, including any orders made under this subsection;

(g) directing the offender to post any bond or pay any amount of money into court that will ensure compliance with any order made under this section;

(h) directing the offender to submit to the Minister, on application by the Minister made within three years after the date of conviction, any information with respect to the offender's activities that the court considers appropriate and just in the circumstances;

(i) directing the offender to compensate any person, monetarily or otherwise, in whole or in part, for the cost of any remedial or preventive action taken, caused to be taken or to be taken as a result of the act or omission that constituted the offence, including costs of assessing appropriate remedial or preventive action;

(j) directing the offender to perform community service, subject to any reasonable conditions that may be imposed in the order;

(k) directing the offender to pay, in the manner prescribed by the court, an amount for the purpose of conducting research into climate change;

(l) directing the offender to pay, in the manner prescribed by the court, an amount to groups concerned with climate change — including groups concerned with the effects of climate change on the Indigenous peoples of Canada and on northern, coastal or remote communities — to assist in their work;

(m) directing the offender to pay, in the manner prescribed by the court, an amount to an educational institution including for scholarships for students enrolled in studies related to climate change;

(n) requiring the offender to comply with any other conditions that the court considers appropriate in the circumstances for securing the offender's good conduct and for deterring the offender and any other person from committing offences under this Part;

(o) requiring the offender to remit compliance units to the Minister or any other person; and

(p) prohibiting the offender from entering into transactions involving compliance units during any period that the court considers appropriate.

#### **Publication**

(2) If an offender fails to comply with an order made under paragraph (1)(e), the Minister may, in the manner that the court directed the offender to do so, publish the facts relating to the commission of the offence and the details of the punishment imposed and recover the costs of publication from the offender.

#### **Debt due to Her Majesty**

(3) If the court makes an order under paragraph (1)(d) or (i) directing an offender to pay an amount to Her Majesty in right of Canada, or if the Minister incurs publication costs under subsection (2), the amount or the costs, as the case may be, constitute a debt due to Her Majesty in right of Canada and may be recovered in any court of competent jurisdiction.

#### **Enforcement**

(4) If the court makes an order under subsection (1) directing an offender to pay an amount to a person other than to Her Majesty in right of Canada and the amount is not paid without delay, the person may, by filing the order, enter as a judgment, in the superior court of the province in which the trial was held, the amount ordered to be paid, and that judgment is enforceable against the offender in the same manner as if it were a judgment rendered against the offender in that court in civil proceedings.

#### **Retirement of compliance units**

(5) If the court makes an order under paragraph (1)(o), any compliance unit that is remitted to the Minister in accordance with the order is retired from circulation.

#### **Coming into force and duration**

(6) An order made under subsection (1) comes into force on the day on which it is made or on any other day that the court may determine and must not continue in force for more than three years after that day unless the court provides otherwise in the order.

### ***Tobacco and Vaping Products Act, S.C. 1997 c. 13***

#### **Information — sale of tobacco products**

15 (1) No manufacturer or retailer shall sell a tobacco product unless the product and the package containing it display, in the prescribed form and manner, the information required

by the regulations about the product and its emissions, and about the health hazards and health effects arising from the use of the product and from its emissions.

#### **Information — packaging of tobacco products**

(1.1) No manufacturer shall package a tobacco product unless the product and the package containing it display, in the prescribed form and manner, the information required by the regulations about the product and its emissions and about the health hazards and health effects arising from the use of the product and from its emissions.

#### **Information — leaflet**

(2) If required by the regulations, every manufacturer or retailer shall provide with a tobacco product, in the prescribed form and manner, a leaflet that displays the information required by the regulations about the product and its emissions and about the health hazards and health effects arising from the use of the product and from its emissions.

(3) [Repealed, 2018, c. 9, s. 20]

### ***Tobacco Products Labelling Regulation, SOR/2011-177***

#### **Package — cartons**

(3) In the case of a carton, the English version of a health warning set out in Set 1 of Part 1 of the source document must be displayed on one of the primary display areas set out in column 2 of item 10 of Schedule 1 and the French version must be displayed on the other. The English version of a different health warning set out in that Set 1 must be displayed on one of the two secondary display areas set out in the same column of the same item and the French version must be displayed on the other.

