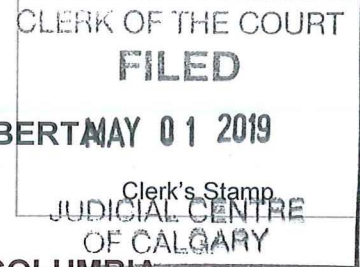


COURT FILE NUMBER 1901- 06115
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFF ATTORNEY GENERAL OF BRITISH COLUMBIA
DEFENDANT ATTORNEY GENERAL OF ALBERTA
DOCUMENT STATEMENT OF CLAIM
ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION OF
PARTY FILING THIS
DOCUMENT
Attorney General of British Columbia
1001 Douglas Street
PO Box 9280, Stn Prov Govt
Victoria, BC V8W 9J7
J. Gareth Morley
Telephone: 250.952.7644
Email: Gareth.Morley@gov.bc.ca



NOTICE TO DEFENDANT

You are being sued. You are a Defendant.

Go to the end of this document to see what you can do and when you must do it.

Statement of Facts:

Introduction

1. The Plaintiff Attorney General of British Columbia brings this action on behalf of the residents of British Columbia. The Attorney General of British Columbia seeks a declaration that the *Preserving Canada's Economic Prosperity Act*, S.A. 2018, c. P 21.5 (the "*Act*") is unconstitutional.
2. The *Act* purports to empower the Alberta Minister of Energy to require international and interprovincial exporters of crude oil, natural gas and refined fuels to obtain licenses. The terms of these licenses may restrict how much of those products will be supplied to British Columbia. Statements by elected officials inside and outside the Alberta Legislative Assembly reveal that the real

purpose of the *Act* is to punish British Columbians for the perceived position of the Government of British Columbia in relation to the Trans Mountain Expansion Project.

3. The Plaintiff says the *Act* is unconstitutional for the following reasons:

- a. The *Act* is a law in relation to interprovincial and international exports, and is therefore in relation to “trade and commerce” under s. 91(2) of the *Constitution Act, 1867*.
- b. Section 92A(2) of the *Constitution Act, 1867* authorizes provincial legislatures to make laws that would otherwise be outside provincial competence as a result of s. 91(2), but only if
 - i. those laws are in relation to exports to another part of Canada of the “primary production” of non-renewable natural resources, and
 - ii. such laws do not “authorize or provide for discrimination in prices or in supplies exported to another part of Canada.”
- c. The *Act* purports to be in relation to the export of “refined fuels”, including gasoline, diesel, aviation fuel and locomotive fuel, which are not the primary production of petroleum resources, as defined in s. 92A and the Sixth Schedule to the *Constitution Act, 1867*.
- d. The *Act* authorizes discrimination in supplies of natural gas and crude oil exported to British Columbia.
- e. Section 121 of the *Constitution Act, 1867* guarantees that the articles of the growth, produce and manufacture of each province shall be admitted free into the other provinces. The *Act*’s essence and purpose is to increase the cost of trade in natural gas, crude oil and refined fuels across the Alberta-British Columbia border for a tariff-like purpose, namely to punish British Columbia. The *Act* is therefore contrary to s. 121 of the *Constitution Act, 1867*.

Provisions of the Act

4. The *Act* authorizes the Alberta Minister of Energy to make an order requiring a person or class of persons to obtain a licence to export natural gas, crude oil, or “refined fuels”.
5. “Refined fuels” are defined to include “gasoline, diesel, aviation fuel and locomotive fuel” and any other fuel or component used to produce refined fuels specified by regulation.
6. The terms and conditions that may be imposed as part of a licence are set out at s. 4(2) of the *Act* as follows:

Terms and conditions of licence

- 4(2) In issuing, amending or renewing a licence, the Minister may impose any terms and conditions, including all or any of the following:
 - (a) the point at which the licensee may export from Alberta any quantity of natural gas, crude oil or refined fuels;
 - (b) the method by which natural gas, crude oil or refined fuels may be exported from Alberta;
 - (c) the maximum quantities of natural gas, crude oil or refined fuels that may be exported from Alberta during the interval or intervals set out in the licence;
 - (d) the maximum daily quantities of natural gas, crude oil or refined fuels that may be exported from Alberta;
 - (e) the conditions under which the export from Alberta of natural gas, crude oil or refined fuels by the licensee may be diverted, reduced or interrupted;
 - (f) the period for which the licence is operative.
7. These provisions purport to authorize the Minister to determine the parts of Canada that will receive interprovincial exports of natural gas, crude oil or refined fuels, and to do so in a way that prefers one part of Canada over another.
8. A violation of the *Act* is an offence, with fines of up to \$10 Million per day for corporations and \$1 Million per day for individuals, including officers, directors or agents of corporations who violate the *Act*.

Alberta's Fuel Exports to British Columbia

9. Approximately 55% of British Columbia's gasoline and 71% of its diesel is imported from Alberta refineries.
10. In addition, the Parkland refinery, located in Burnaby, British Columbia, produces approximately 25% of the gasoline and diesel consumed in British Columbia. The majority of the Parkland refinery's crude oil feedstock is imported from Alberta.
11. British Columbia is a major export market for Alberta's refined fuels and a significant market for crude oil. There is no economic logic for Alberta to restrict exports of refined fuels and crude oil to British Columbia, given that Alberta has long had in place legislation which allows it to curtail oil and gas production to maximize returns and to ensure supply for Alberta residents.

The Trans Mountain Expansion Project and Introduction of Bill 12

12. On April 8, 2018, Steve Kean, the Chief Executive Officer of Kinder Morgan Canada Limited, announced that the company was discontinuing all non-essential work on the Trans Mountain Expansion Project (the "Project").
13. Mr. Kean attributed the decision to "*uncertainty created by B.C.*" as a result of what a Kinder Morgan statement characterized as "*opposition by the Government of British Columbia*" to the Project.
14. On April 9, Margaret McCuaig-Boyd, then the Alberta Minister of Energy, stated to the Alberta Legislature, "*In the forthcoming days there will be legislation dropped – and I hope you will be supporting that – to restrict resources to B.C., to inflict economic pain upon them so that they realize what their decisions mean.*" This "economic pain" would be exacted by "*introducing legislation in the coming days that will allow us to restrict the flow of refined product into B.C.*" Minister McCuaig-Boyd's use of the words "their decisions" was intended to be understood as a reference to the perceived position of the government of British Columbia in relation to the Project.

15. On April 16, Minister McCuaig-Boyd introduced Bill 12, the draft of the *Act*, to the Legislative Assembly of Alberta.
16. The intention of introducing Bill 12 into the Alberta Legislature was to inflict economic pain on British Columbia by limiting the supply of petroleum products to British Columbia in response to political or policy positions taken or alleged to be taken by the government of British Columbia.

Debate on the *Act* Reveals Purpose is to Punish British Columbia

17. The debate on the *Act* reveals that the purpose of the *Act* was to give the Alberta Government the ability to threaten or punish British Columbia for political or policy positions taken by the government of British Columbia.
18. On May 2, 2018, Craig Coolahan, the Member for Calgary-Klein, moved second reading of Bill 12 on behalf of Minister McCuaig-Boyd, stating to the Alberta Legislature, "*The bottom line, Mr. Speaker: the B.C. government cannot continue to delay the Trans Mountain pipeline project without economic consequences.*"
19. In the Second Reading Debate, the Opposition Critic for Energy, Prasad Panda, referred to the *Act* as a "*loaded economic weapon.*"
20. The Leader of Her Majesty's Official Opposition, Jason Kenney, stated the *Act* was part of a "*fight back strategy*" aimed at the "*NDP in Victoria.*"
21. At the end of the Second Reading Debate, Minister McCuaig-Boyd stated:

[I]t has become clear that the government of Alberta needs more tools in our tool box to motivate B.C. to stop using unconstitutional tactics to delay the pipeline construction and to motivate the federal government to defend its jurisdiction on the decision it made.
22. In context, these comments showed that the true purpose of the *Act* was to authorize the Government of Alberta to reduce supplies of crude oil, natural gas and refined fuels to cause economic harm to British Columbians as a response to

perceived positions of the Government of British Columbia in relation to the Project.

23. The *Act* was referred to the Committee of the Whole on May 9. The Committee amended it to add a “sunset clause,” such that the *Act* would be repealed after two years. A sub-amendment permitted the Legislative Assembly, by resolution, to extend the sunset period. In debating the amendment and sub-amendment, members referred to the “extraordinary” nature of the powers granted to the Minister of Energy by the *Act* and the potential for them to damage the oil and gas industry and the economy of Alberta. The sole purpose of retaining the powers was stated by members of the Government and the Official Opposition to be to use them if the Government of British Columbia persisted in acting in a way perceived to be contrary to the interests of Alberta.
24. The *Act* was given Third Reading on May 10 and May 16. During the course of the Third Reading debate, ministers and members of both the governing party and the Official Opposition made clear that the purpose of Bill 12 was to authorize the Minister of Energy to reduce supplies of crude oil, natural gas and refined fuels to cause economic harm to British Columbians as a response to perceived positions of the Government of British Columbia in relation to the Project.
25. The *Act* was given royal assent on May 18, 2018.

The Prior Action

26. On May 22, 2018, the Attorney General of British Columbia filed Action No. 1801-07204 in the Calgary Registry (the “Prior Action”) challenging the constitutionality of the *Act*. At the time, the *Act* had not yet been proclaimed into force.
27. The Attorney General of Alberta brought an application to have the Prior Action dismissed, not on the merits, but on the basis it was premature until the *Act* was proclaimed into force.

28. On February 22, 2019, the Honourable Mr. Justice Hall of this Court allowed the application of the Attorney General of Alberta and dismissed the Prior Action on the basis the claim was premature because the *Act* is not law “in force in Alberta.” At paragraph 24 of his reasons for judgment, Mr. Justice Hall stated that, “Should the Alberta Government proclaim the *Act* in force, the AGBC may recommence a claim.”

Proclamation of the *Act*

29. On April 30, 2019, the Lieutenant Governor in Council of Alberta proclaimed the *Act* into force.

The *Act* Is In Pith and Substance in Relation to Interprovincial Trade

30. Section 91(2) of the *Constitution Act, 1867* grants the Parliament of Canada the exclusive authority to legislate in relation to interprovincial and international trade.
31. The *Act* is in pith and substance in relation to international and interprovincial trade because
- a. by its terms it applies only to exports and not to property and civil rights in the province,
 - b. its dominant purpose and effect is to restrict the flow of product out of the province and raise prices for that product outside of the province.

The *Act* is *Ultra Vires* 92A(2) Because It Includes Refined Products

32. Section 92A(2) of the *Constitution Act, 1867* gives provincial legislatures authority to make laws in relation to the interprovincial export of “primary production” of non-renewable natural resources, forestry resources and production from facilities in the province for the generation of electrical energy. Section 92A(2) provides a carefully delimited exception to the principle established by section 91(2) that provinces cannot legislate in relation to interprovincial trade.

33. Laws in pith and substance in relation to the interprovincial export of non-renewable resources, other than “primary production” of the non-renewable resource, remain within exclusive federal competence under section 91(2).
34. Section 92A(5) states that the term “primary production” is defined by the Sixth Schedule to the *Constitution Act, 1867*, which provides:

**Primary Production from Non-Renewable Natural Resources
and Forestry Resources**

1. For the purposes of section 92A of this *Act*,
 - (a) production from a non-renewable natural resource is primary production therefrom if
 - (i) it is in the form in which it exists upon its recovery or severance from its natural state, or
 - (ii) it is a product resulting from processing or refining the resource, and is not a manufactured product or a product resulting from refining crude oil, refining upgraded heavy crude oil, refining gases or liquids derived from coal or refining a synthetic equivalent of crude oil;
35. The *Constitution Act, 1867* therefore excludes from provincial competence laws in relation to “refined fuels” as defined in the *Act*.

The Act Is *Ultra Vires* Because It Authorizes or Provides For Discrimination

36. Provincial legislatures may not make laws in relation to the interprovincial export of non-renewable natural resources if those laws provide for or authorize discrimination in prices or in supplies against another part of Canada.
37. The central purpose and legal effect of the *Act* is to authorize and provide for discrimination against British Columbia in relation to exports of natural gas, crude oil and refined fuels. The *Act* is therefore unconstitutional.

The Act Is Unconstitutional Because It Violates Section 121 of the *Constitution*

38. The *Constitution Act, 1867*, section 121 provides:

Canadian Manufactures, etc.

121. All Articles of the Growth, Produce, or Manufacture of any one of the Provinces shall, from and after the Union, be admitted free into each of the other Provinces.

- 39. Crude oil, natural gas and refined fuels are articles of the growth, produce or manufacture of the province in which they are produced or refined.
- 40. A law that in essence and purpose restricts trade across provincial boundaries violates section 121.
- 41. The essence of the *Act* is to restrict supplies of crude oil, natural gas and refined fuels crossing the Alberta-British Columbia border, thereby reducing the supply and increasing the price. An export quota has the same effect as an export tariff.
- 42. The primary purpose of the *Act* is a purpose traditionally served by tariffs, namely using import or export restrictions to put economic pressure on other jurisdictions as retaliation for policies considered harmful by the jurisdiction enacting the measure.

Remedy Sought:

- 43. A declaration that the *Act* is inconsistent with the Constitution of Canada and of no force and effect.
- 44. In the alternative, a declaration that:
 - a. Section 1(g) of the *Act* is of no force and effect;
 - b. In section 2(1) of the *Act*, the phrase “or refined fuels” is of no force and effect;
 - c. In section 2(2)(c) of the *Act*, the phrase “and refined fuels” is of no force and effect;

- d. In section 4(2) of the *Act*, all references to “refined fuels” are of no force and effect;
- e. Section 4(4) of the *Act* is of no force and effect; and,
- f. All other references in the *Act* to “refined fuels” are of no force and effect.

NOTICE TO THE DEFENDANT

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the court of Queen’s Bench at Calgary, Alberta, AND serving your statement of defence or a demand for notice on the Plaintiff’s address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the Plaintiff against you.