



ENVIRONMENT

See also: Constitutional Law

Judicial review of Order in Council P.C. 2019-218 making *Regulation Amending Part 1 of Schedule 1 and Schedule 2 to the Greenhouse Gas Pollution Pricing Act*, SOR/2019-79 (Part 1 Regulations), which added Manitoba to list of provinces in which fuel charge under Part 1 of *Greenhouse Gas Pollution Pricing Act*, S.C. 2018, c. 12 (GGPPA) operates — Manitoba seeking order declaring that Order 2019-218, Regulation SOR/2019-79 invalid or unlawful — Challenge herein heard prior to release of Supreme Court's decision in *References re Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11 (*Reference Decision*) — Supreme Court upholding constitutionality of GGPPA therein under Parliament's jurisdiction over matters of national concern under peace, order, good government (POGG) clause of *Constitution Act, 1867*, s. 91 — Applicant submitting that Governor in Council (GIC) acted unreasonably, arbitrarily by including Manitoba — Challenging both decisions of GIC to add Manitoba to GGPPA, Schedule 1, Part 1 making fuel charge in GGPPA, Part 1 apply in Province of Manitoba — GGPPA requiring all Canadian provinces, territories to legislate towards reducing annual greenhouse gases (GHG) emissions output in accordance with stringency standards set out in federal Benchmark for carbon pricing — Benchmark providing guidance on core set of carbon pricing stringency criteria adopted by Government of Canada, including legislated increases in stringency — GGPPA, Parts 1, 2 of Schedule 1 imposing "backstop" on provinces, territories that pass emissions reduction legislation that does not meet federal stringency standards set out in Benchmark — If legislation not meeting Benchmark stringency requirements, GIC can list that jurisdiction in Parts 1, 2 of Schedule 1, making GGPPA itself apply within that province or territory — Part 1 implementing fuel charge — Part 2 providing framework for output-based pricing system, establishing excess emissions charge for large industrial emitters — Under GGPPA, ss. 166, 189, GIC empowered to add provinces or territories to Parts 1 or 2 of Schedule 1 — Manitoba released its Climate and Green Plan in 2017 — Pointing out that its carbon tax higher than federal Benchmark for years 2018-2019 — Withdrew its Plan in October 2018 — Asserting decision to withdraw proposed carbon pricing plan motivated by desire to avoid having Government of Canada "top up" that plan with second layer of taxation in province — GIC concluded that Parts 1, 2 applying in Manitoba because that province no longer having pricing system to assess using Benchmark stringency criteria — Manitoba submitting, *inter alia*, that GIC exceeded its jurisdiction, acted unreasonably, arbitrarily by failing to apply minimum national standard of carbon pricing uniformly across country — Arguing that: (1) assessing Manitoba's proposed carbon tax as insufficiently stringent running contrary to "fundamental purpose" of GGPPA to reduce GHG emissions; (2) unreasonable, arbitrary for GIC to assess GGPPA's stringency requirement differently in relation to different provinces, territories; (3) GIC required to exercise its discretion under GGPPA, ss. 166, 189 with eye to *results*, not simply to whether proposed provincial plan in line with incremental annual increases in GHG reduction outlined in federal Benchmark; (4) interpretation of stringency requirement by reference to results, not just price, accords with

text, context, purpose of GGPPA — Whether reasonable for GIC to amend GGPPA, Schedule 1 to include Manitoba on list of provinces, territories to which Parts 1, 2 applying — GIC exercising its discretion consistently with purpose of GGPPA, constraints set out in ss. 166, 189 — Definition of “stringency” not contained in GGPPA, addressed in *Reference Decision* — GIC interpretation of “stringency” acceptable herein, i.e. as meeting standards of stringency set out in federal Benchmark — Parliament intending word “stringency” to mean carbon pricing that increases incrementally over time, begins with minimum price of \$10 per excess ton of carbon in 2018 — This interpretation of stringency reasonable in light of text, context, purpose of GGPPA — Comports with statutory grants of power in GGPPA, ss. 166(3), 189(2) — GIC’s assessment that Manitoba’s plan insufficiently stringent also reasonable — Whether impugned Decisions running constitutionally afoul of POGG — While POGG imposing requirement for uniformity, GGPPA meeting that requirement by imposing uniform minimum national standards of GHG reduction through “sufficient stringency” terms of GGPPA, ss. 166, 189 — So long as GIC using same barometer for stringency when assessing proposed provincial legislation under GGPPA, no constitutional infirmity arising with respect to POGG — Manitoba’s contention that GIC arbitrarily assessed stringency as between provinces premised on misunderstanding of evidence — Application dismissed.

MANITOBA V. CANADA (ATTORNEY GENERAL) (T-685-19, 2021 FC 1115, Mosley J., reasons for judgment dated October 21, 2021, 48 pp.)