

COURT FILE NUMBER **1801 –**
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**



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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 against the Defendant Attorney General of Alberta for declaratory relief in relation to the unconstitutionality of the *Preserving Canada's Economic Prosperity Act*, S.A. c. P-21.5 (the "Act"). The Plaintiff brings this proceeding as guardian of the public interest.

2. The *Act* purports to empower the Alberta Minister of Energy to require interprovincial exporters of crude oil, natural gas, and refined fuels to obtain licenses. The terms of those licenses may restrict or otherwise interfere with or impose cost burdens on the supply of those products to British Columbia. The *Act* is *ultra vires* the Province of Alberta as being inconsistent with s. 91(2) of the *Constitution Act, 1867* and not authorized by s. 92A. It is also inconsistent with s. 121 of the *Constitution Act*.
3. The Government of Alberta introduced and supported the *Act* because it asserts British Columbia is responsible for “delays” to an expansion of the Trans Mountain Pipeline, which transports petroleum products from Edmonton to Kamloops, Burnaby, and Washington. Alberta seeks to utilize powers under the *Act* to punish British Columbia, and to exert pressure upon British Columbia with a view to forcing British Columbia to, *inter alia*, discontinue the reference to its own courts about the constitutionality of proposed amendments to the British Columbia *Environmental Management Act*, RSBC 1996, c. 53.

Provisions of the *Act*

4. The *Act* authorizes the 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. By providing for terms and conditions imposing restrictions on the volume, method of export and point of export of these fuels, the *Act* empowers the Minister to make orders that will restrict the flow of, or increase the price of, these fuels as they are exported to a particular province.
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. A significant percentage of the gasoline and diesel consumed in British Columbia is imported from Alberta refineries, either by pipeline, train or tanker truck. Refined petroleum products and crude oil exported from Alberta to British Columbia by pipeline comes through the Trans Mountain Pipeline, which was built in 1953.
10. In addition, the Parkland refinery, located in Burnaby, British Columbia, produces some of the gasoline and diesel consumed in British Columbia. The majority of the Parkland refinery's crude oil feedstock is imported from Alberta.
11. A significant disruption in the supply of gasoline, diesel, and crude oil from Alberta to British Columbia would cause British Columbia irreparable harm. In addition to

economic harm, a sudden disruption in supply could injure human health and safety in remote communities.

The Act is Intended to Punish British Columbia

12. On January 30, 2018, the Government of British Columbia announced its intention to engage in consultation on proposed legislation to improve preparedness, response and recovery from potential spills into the environment, including measures imposing restrictions on increased volumes of diluted bitumen brought into British Columbia.
13. On February 6, Rachel Notley, Premier of Alberta, announced that the Alberta Gaming and Liquor Commission would put an end to imports of British Columbia wine into Alberta. Premier Notley stated that this action was in response to British Columbia's announcement, as any restrictions imposed by British Columbia on the transportation of diluted bitumen would be unconstitutional.
14. On February 19, British Columbia referred the Alberta measure against British Columbia wines to a dispute process under the *Canadian Free Trade Agreement*.
15. On February 22, John Horgan, Premier of British Columbia, announced that:
 - a. he intended to ask British Columbia's cabinet to set a reference question in relation to the province's authority to "take appropriate measures to protect our environment, economy and our coast from the drastic consequences of a diluted bitumen spill"; and
 - b. British Columbia would take no action to implement restrictions on diluted bitumen in British Columbia until the reference could be determined.
16. That same day, Alberta Premier Notley announced that the Government of Alberta was suspending any measures against British Columbia wines, stating that by referring the matter to the courts, "B.C. is stepping back from the brink and abiding by the law". Premier Notley expressed the Government of Alberta's confidence that its constitutional position would be vindicated in the reference proceeding.

17. On April 8 Steve Kean, the Chief Executive Officer of Kinder Morgan Canada Limited (“Kinder Morgan”) announced that the company was discontinuing all non-essential work on the Trans Mountain Expansion Project (the “Project”). The Project is a proposal by Kinder Morgan to increase the capacity of its existing pipeline system from approximately 300,000 barrels per day to 890,000 barrels per day.
18. Mr. Kean attributed the decision to discontinue work on the Project to “uncertainty created by B.C.”, as a result of what Kinder Morgan characterized as “opposition by the Government of British Columbia” to the Project.
19. That day, Alberta Premier Rachel Notley posted on twitter.com, “We will be bringing forward legislation giving our gov't the powers it needs to impose serious economic consequences on British Columbia if its government continues on its present course.”
20. On April 9, Margaret McCuaig-Boyd, Minister of Energy for Alberta, stated to the Alberta Legislature:

You know, we are going to do what we need to do to get that pipeline built, and legislation we'll be introducing shortly will show .

..

...

We're going to be introducing legislation shortly which will inflict pain on British Columbia.

...

They've made some decisions, and we're going to inflict pain on those economic decisions so they understand what they've done.

...

You know, as I mentioned, in the coming days we will be introducing legislation which will have much more detail on what we will be doing to restrict product going to B.C.

...

As I mentioned, 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.

...

Every decision we make will be weighed against benefit to Alberta, pain to B.C.

...

We'll make, as I mentioned, B.C. feel the economic pain. We're introducing legislation in the coming days that will allow us to restrict product.

We will make B.C. feel the economic pain for its decisions. We're introducing legislation in the coming days that will allow us to restrict the flow of refined product into B.C.

21. Similar statements by other ministers of the Government of Alberta at the time when the proposed legislation – Bill 12 – was introduced, debated and passed indicate that its purpose 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 in order to punish and put pressure on British Columbia.
22. In the Second Reading Debate, Prasad Panda, Opposition Critic for Energy, referred to Bill 12 as a “loaded economic weapon”, while Jason Kenney, the Leader of Her Majesty’s Official Opposition, stated it was part of a “fight back strategy” aimed at the “NDP in Victoria”. No Minister or Member supporting the Government disagreed with this assessment.
23. 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.
24. Bill 12 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 Bill 12 and the potential for them to damage the oil and gas industry and the economy of Alberta. The sole purpose of retaining the power was

stated to be if the Government of British Columbia persisted in acting in a way perceived to be contrary to the interests of Alberta.

25. Just prior to Third Reading, Premier Notley stated that "Albertans, British Columbians and all Canadians should understand that if the path forward for the pipeline through B.C. is not settled soon, I am ready and prepared to turn off the taps".
26. The *Act* was given Royal Assent on May 18, 2018.

The *Act* is in Pith and Substance in Relation to Interprovincial Trade

27. 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, except insofar as provincial laws relating to exports are authorized under s. 92A.
28. The *Act* is in pith and substance in relation to international and interprovincial trade because:
 - a. by its terms it applies only to exports;
 - 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* 92 A(2) Because it Includes Refined Products

29. 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. It provides a carefully delimited exception to the principle established by s. 91(2) that provinces cannot legislate in relation to interprovincial trade.

30. 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;
31. The *Act's* definition of “refined fuels” includes products resulting from refining crude oil, upgraded heavy crude oil, or a synthetic equivalent of crude oil, rendering the *Act ultra vires*.

The *Act* is *Ultra Vires* 92A (2) Because it Authorizes Discrimination in Supplies

32. With respect to “primary production” of non-renewable natural resources, s. 92A(2) prohibits a provincial legislature from making laws in relation to the export of primary production if those laws authorize or provide for discrimination in prices or supplies exported to another part of Canada
33. The *Act* authorizes discrimination in supplies exported to specific parts of Canada. Its purpose and effect is to authorize and provide for discrimination against British Columbia in relation to the production covered by the *Act*.

The *Act* is Unconstitutional Because it Violates Section 121 of the *Constitution*

34. The *Constitution Act, 1867*, s. 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.

35. 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.
36. Section 121 prohibits any law that is a tariff (a duty or charge of any kind imposed on or in connection with importation or exportation of goods across a border) or whose purpose and essence makes the law “tariff-like”.
37. The essence of the *Act* is to impose a cost burden on crude oil, natural gas and refined fuels crossing the Alberta/British Columbia border.
38. The primary purpose of the *Act* is a purpose traditionally served by tariffs, namely, punishing another province, namely British Columbia.

Remedy Sought:

39. A declaration that the *Act* is inconsistent, in whole or in part, with the Constitution of Canada and is 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.