

**SUPREME COURT OF CANADA**

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| **Citation:** Reference re Environmental Management Act, 2020 SCC 1, [2020] 1 S.C.R. 3 | **Appeal Heard:** January 16, 2020  **Judgment Rendered:** January 16, 2020  **Docket:** 38682 |

IN THE MATTER OF a Reference by the Lieutenant Governor in Council set out in Order in Council No. 211/18 dated April 25, 2018, concerning the constitutionality of amendments to provisions in the *Environmental Management Act*, S.B.C. 2003, c. 53, regarding the impacts of releases of certain hazardous substances

Between:

Attorney General of British Columbia

Appellant

and

Attorney General of Canada

Respondent

- and -

Attorney General of Ontario, Attorney General of Quebec, Attorney General of Saskatchewan, Attorney General of Alberta, Ecojustice Canada Society, Canadian Energy Pipeline Association, Assembly of First Nations, Heiltsuk Tribal Council, City of Burnaby, Trans Mountain Pipeline ULC, Enbridge Inc., Railway Association of Canada, Explorers and Producers Association of Canada, Canadian Fuels Association, Council of The Haida Nation, Little Shuswap Lake Indian Band, City of Vancouver, Suncor Energy Inc., Imperial Oil Limited, Husky Oil Operations Limited, Cenovus Energy Inc., Canadian Natural Resources Limited, Beecher Bay First Nation, Songhees Nation, T’Sou-ke Nation and Canadian Association of Petroleum Producers

Interveners

**Coram:** Wagner C.J. and Abella, Moldaver, Karakatsanis, Côté, Brown, Rowe, Martin and Kasirer JJ.

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| **Unanimous Judgment Read By:**  (para. 1) | Wagner C.J. |

**IN THE MATTER OF a Reference by the Lieutenant Governor in Council set out in Order in Council No. 211/18 dated April 25, 2018, concerning the constitutionality of amendments to provisions in the *Environmental Management Act*, S.B.C. 2003, c. 53, regarding the impacts of releases of certain hazardous substances**

Attorney General of British Columbia Appellant

v.

Attorney General of Canada Respondent

and

Attorney General of Ontario,

Attorney General of Quebec,

Attorney General of Saskatchewan,

Attorney General of Alberta,

Ecojustice Canada Society,

Canadian Energy Pipeline Association,

Assembly of First Nations,

Heiltsuk Tribal Council,

City of Burnaby,

Trans Mountain Pipeline ULC,

Enbridge Inc.,

Railway Association of Canada,

Explorers and Producers Association of Canada,

Canadian Fuels Association,

Council of The Haida Nation,

Little Shuswap Lake Indian Band,

City of Vancouver,

Suncor Energy Inc.,

Imperial Oil Limited,

Husky Oil Operations Limited,

Cenovus Energy Inc.,

Canadian Natural Resources Limited,

Beecher Bay First Nation,

Songhees Nation,

T’Sou-ke Nation and

Canadian Association of Petroleum Producers Interveners

**Indexed as: Reference re *Environmental Management Act***

2020 SCC 1

File No.: 38682.

2020: January 16.

Present: Wagner C.J. and Abella, Moldaver, Karakatsanis, Côté, Brown, Rowe, Martin and Kasirer JJ.

on appeal from the court of appeal for british columbia

*Constitutional law — Division of powers — Interprovincial undertakings — Environmental protection — Province of British Columbia referring constitutionality of proposed amendments to Environmental Management Act, S.B.C. 2003, c. 53, to Court of Appeal — Proposed amendments introducing hazardous substance permit system to regulate presence of heavy oil in province and thus impacting Trans Mountain pipeline expansion — Court of Appeal holding that it is not within legislative authority of Legislature of British Columbia to enact proposed amendments* *as their* *pith and substance, which is to place conditions on, and if necessary, prohibit, carriage of heavy oil through interprovincial undertaking, relates to Parliament’s jurisdiction in respect of federal undertakings under s. 92(10) of Constitution Act, 1867 — Court of Appeal’s decision upheld — Constitution Act, 1867, s. 92(10).*

APPEAL from a judgment of the British Columbia Court of Appeal (Bauman C.J.B.C. and Newbury, Groberman, Harris and Fenlon JJ.A.), 2019 BCCA 181, 25 B.C.L.R. (6th) 1, 25 C.E.L.R. (4th) 1, 434 D.L.R. (4th) 213, [2020] 3 W.W.R. 544, [2019] B.C.J. No. 925 (QL), 2019 CarswellBC 1429 (WL Can.), in the matter of a reference concerning the constitutionality of amendments to provisions in the *Environmental Management Act*, S.B.C. 2003, c. 53, regarding the impacts of releases of certain hazardous substances. Appeal dismissed.

*Joseph J. Arvay*, *Q.C.*, *Catherine Boies Parker*, *Q.C.*, and *Derek Ball*, for the appellant.

*Jan Brongers* and *B.J. Wray*, for the respondent.

*Josh Hunter* and *Aud Ranalli*, for the intervener the Attorney General of Ontario.

*Frédéric Perreault* and *Jean-François Beaupré*, for the intervener the Attorney General of Quebec.

*Thomson Irvine*, *Q.C.*, and *Noah Wernikowski*, for the intervener the Attorney General of Saskatchewan.

*Peter A. Gall*, *Q.C.*, *Margaret Unsworth*, *Q.C.*,and *Andrea L. Zwack*, for the intervener the Attorney General of Alberta.

*Harry Wruck*, *Q.C.*, and *Kegan Pepper-Smith*, for the intervener the Ecojustice Canada Society.

*Michael A. Marion*, *Alan L. Ross* and *Brett R. Carlson*, for the intervener the Canadian Energy Pipeline Association.

*Julie McGregor* and *Stuart Wuttke*, for the intervener the Assembly of First Nations.

*Lisa C. Fong*, *Q.C.*, for the intervener the Heiltsuk Tribal Council.

*Michelle L. Bradley*, for the intervener the City of Burnaby.

*Maureen E. Killoran*, *Q.C.*, and *Olivia Dixon*, for the intervener Trans Mountain Pipeline ULC.

*Maureen E. Killoran*, *Q.C.*, *Sean Sutherland* and *Robert Rooney*, *Q.C.*, for the intervener Enbridge Inc.

*Nicholas R. Hughes* and *Kevan Hanowski*, for the intervener the Railway Association of Canada.

*Paul Chiswell*, *Robert Martz* and *Brendan Downey*, for the intervener the Explorers and Producers Association of Canada.

*Geoffrey G. Cowper*, *Q.C.*, and *Daniel Byma*, for the intervener the Canadian Fuels Association.

*G. L. Terri-Lynn Williams-Davidson*, *David Paterson* and *Elizabeth Bulbrook*, for the intervener the Council of The Haida Nation.

*Arthur M. Grant* and *Roderick B. McLennan*, for the intervener the Little Shuswap Lake Indian Band.

*Susan Horne* and *Kevin Nakanishi*, for the intervener the City of Vancouver.

*Catherine Beagan Flood* and *Laura Cundari*, for the interveners Suncor Energy Inc., Imperial Oil Limited, Husky Oil Operations Limited, Cenovus Energy Inc. and Canadian Natural Resources Limited.

*Robert Janes*, *Q.C.*, and *Aria Laskin*, for the interveners the Beecher Bay First Nation, the Songhees Nation and the T’Sou-ke Nation.

*Brad Armstrong*, *Q.C.*, *Keith B. Bergner* and *Toby Kruger*, for the intervener the Canadian Association of Petroleum Producers.

The judgment of the Court was delivered orally by

[1] The Chief Justice — We are all of the view to dismiss the appeal for the unanimous reasons of the Court of Appeal for British Columbia.

*Judgment accordingly.*

*Solicitors for the appellant: Arvay Finlay, Vancouver.*

Solicitor for the respondent: Attorney General of Canada, Vancouver.

*Solicitor for the intervener the Attorney General of Ontario: Attorney General of Ontario, Toronto.*

*Solicitor for the intervener the Attorney General of Quebec: Attorney General of Quebec, Québec.*

*Solicitor for the intervener the Attorney General of Saskatchewan: Attorney General of Saskatchewan, Regina.*

*Solicitors for the intervener the Attorney General of Alberta: Gall Legge Grant Zwack, Vancouver; Attorney General of Alberta, Edmonton.*

*Solicitor for the intervener the Ecojustice Canada Society: Ecojustice Canada Society, Vancouver.*

*Solicitors for the intervener the Canadian Energy Pipeline Association: Borden Ladner Gervais, Calgary.*

*Solicitor for the intervener the Assembly of First Nations: Assembly of First Nations, Ottawa.*

*Solicitors for the intervener the Heiltsuk Tribal Council: Ng Ariss Fong, Vancouver.*

*Solicitors for the intervener the City of Burnaby: Ratcliff & Company, North Vancouver.*

*Solicitors for the intervener Trans Mountain Pipeline ULC: Osler, Hoskin & Harcourt, Calgary.*

*Solicitors for the intervener Enbridge Inc.: Osler, Hoskin & Harcourt, Calgary.*

*Solicitors for the intervener the Railway Association of Canada: McCarthy Tétrault, Vancouver.*

*Solicitors for the intervener the Explorers and Producers Association of Canada: Burnet, Duckworth & Palmer, Calgary.*

*Solicitors for the intervener the Canadian Fuels Association: Fasken Martineau DuMoulin, Vancouver.*

*Solicitors for the intervener the Council of The Haida Nation: White Raven Law Corporation, Surrey; Paterson Law Office, Surrey.*

*Solicitors for the intervener the Little Shuswap Lake Indian Band: Grant Kovacs Norell, Vancouver.*

*Solicitor for the intervener the City of Vancouver: City of Vancouver, Vancouver.*

*Solicitors for the interveners Suncor Energy Inc., Imperial Oil Limited, Husky Oil Operations Limited, Cenovus Energy Inc. and Canadian Natural Resources Limited: Blake, Cassels & Graydon, Toronto.*

*Solicitors for the interveners the Beecher Bay First Nation, the Songhees Nation and the T’Sou-ke Nation: JFK Law Corporation, Victoria.*

*Solicitors for the intervener the Canadian Association of Petroleum Producers: Lawson Lundell, Calgary.*