

.....

**LEGAL OPINION ON THE CONSTITUTIONALITY OF THE FEDERAL  
CARBON PRICING BENCHMARK AND BACKSTOP PROPOSALS**

**Purpose**

The Province of Manitoba is seeking an independent legal opinion on the constitutionality of the Government of Canada's proposed approach to reducing greenhouse gas emissions, as set out in the Pan-Canadian Framework on Clean Growth and Climate Change and accompanying federal documents on its proposed benchmark and backstop provisions.

**Context**

Manitoba has been proceeding with a made-in-Manitoba climate and green plan involving a made-in-Manitoba carbon pricing component. This was part of the new government's platform and Throne Speeches.

Subsequent to adoption of this approach, the federal government sought provincial agreement with a proposed Pan-Canadian Framework on Clean Growth and Climate Change. The framework sets out benchmarks and backstops that limit the scope of provincial action in determining and implementing a made-in-Manitoba plan. Manitoba deferred signing the framework in December 2016.

Manitoba's unique circumstances of virtually 100 per cent clean, renewable electricity and a vibrant service, transportation, agricultural and manufacturing economy make the federal conditions set out within the framework unsuitable for the province. The province released a detailed response to the federal backstop proposal on June 29, 2017, setting out its concerns.

**Action**

In order for Manitoba to finalize its made-in-Manitoba approach to climate change and carbon pricing, it requires clarity as to the legal applicability of the federal proposals to Manitoba. To do so, the province has engaged Bryan Schwartz, former chair of the constitutional section of the Canadian Bar Association, to provide advice on this matter. Schwartz is a renowned national scholar and expert in the fields of constitutional law, trade law and labour law. He has advised the governments of Canada, Manitoba, Saskatchewan and Yukon in the past and has been an advisor to the Assembly of First Nations, among others.

## Terms of Reference

Manitoba seeks an independent legal opinion on the following questions:

1. Does the federal government have the constitutional authority as set out in Section 91(1) of The Constitution Act 1867 to enact legislation directed at the reduction of greenhouse gas emissions into the atmosphere?
2. If the answer to Question 1 is “yes”, then does it fall within federal constitutional authority to enact legislation directed at the reduction of carbon and other greenhouse gases in the form of backstop legislation that will apply in one province, but not others, only if the federal government determines that it applies in that province?
3. If the answer to Question 2 is “yes”, then are there any constitutional limits as to the scope or reach of this authority including the ability to enact specific types of measures to reduce greenhouse gas emissions such as a carbon tax, a cap-and-trade system or a hybrid carbon levy and output-based pricing system as set out in the federal benchmark and backstop policy directions?
4. Based on the answer to Question 3, does a province have the constitutional authority to develop their own approach to reduce carbon and greenhouse gas emissions in a matter it deems appropriate or equivalent, or can the federal government override provincial legislation and actions in the form of its backstop proposal?