Federal Court  Cour fédérale

Ottawa, September 24, 2019 – A decision was issued today by Justice Sébastien Grammond of the Federal Court in file T-982-19:

IN THE MATTER OF Attorney General of British Columbia v. Attorney General of Alberta

Summary – British Columbia seeks a declaration that Alberta's recently enacted Preserving Canada's Economic Prosperity Act [the Act] is unconstitutional. This Act empowers the Minister of Energy of Alberta [the Minister] to require anyone who wishes to export natural gas, crude oil or refined fuels from Alberta to obtain a licence and to impose terms and conditions on such exports, including their quantity and destination. One of the factors that the Minister must consider before imposing such requirements is "whether adequate pipeline capacity exists to maximize the return on crude oil and diluted bitumen produced in Alberta."

British Columbia argues that the Act regulates interprovincial commerce, which is an area of exclusive federal jurisdiction, and that it is not saved by the exceptions contained in section 92A of the Constitution Act, 1867. Moreover, it asserts that the Act contravenes the prohibition of interprovincial customs duties in section 121 of the Constitution Act, 1867. According to British Columbia, the only purpose of the Act is to allow Alberta to cut British Columbia's main source of petroleum products, in retaliation for its perceived opposition to the Trans Mountain pipeline expansion project.

This decision deals with two motions brought in the course of the action.

First, Alberta brought a motion to strike British Columbia's action on the basis that it is not within the jurisdiction of the Federal Court and that it is premature.

Second, British Columbia brought a motion for an interlocutory injunction preventing the Minister from exercising her powers under the Act.

The Court dismissed Alberta's motion to strike. Pursuant to section 19 of the Federal Courts Act, the Federal Court has optional jurisdiction over interprovincial disputes. By legislation, British Columbia and Alberta have opted into that jurisdiction. Alberta did not provide any convincing reason why this jurisdiction would not encompass disputes regarding the constitutional validity of provincial legislation. Moreover, the Court found that it was not premature to bring the matter before the Court, as British Columbia challenges the Act itself and not any specific measure taken pursuant to the Act.

The Court allowed British Columbia's motion for an interlocutory injunction. British Columbia has met the criteria usually applied by the courts for the issuance of such an injunction. It has shown that the validity of the Act raises a serious issue. It has also demonstrated that an embargo of the nature evoked by the members of Alberta's legislature when debating the Act would cause irreparable harm to the residents of British Columbia. The Court rejected Alberta's argument that this harm is speculative, finding that it was reasonably certain and noted that whether or not the harm is triggered lies entirely within Alberta's discretion. Lastly, the Court concluded that British Columbia had shown that the balance of convenience was in its favour, given the strength of its case and the lack of any clear and identifiable negative consequences for Alberta if the injunction were granted.

The trial will continue at a future date to hear evidence and submissions on the merits of the action.

A copy of the decision can be obtained via the Web site of the Federal Court: https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/421977/index.do?q=T-982-19