

Protecting BC Interests

Highlights:

- The opposition has said that the BC government is making the wine sector pay the price of an unnecessary dispute over a project that has federal approval.
- In a Feb 12th interview, the Prime Minister said that the BC Premier's actions threaten the federal plan to address climate change.
- The Premier announced that BC will send the bitumen proposal to the Courts in a reference case to affirm the province's right to regulate.
- In response, Alberta announced they were suspending their boycott of BC wine and willing to resume talks about the electricity intertie.

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Page 002 to/à Page 003

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- On Kinder Morgan's proposed cleanup of diluted bitumen:*

“The Province submits that the effectiveness of these techniques has not been proven, particularly in British Columbia’s rivers.” (Final Argument, Jan 11, 2016)

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Background:

- On January 30, the BC Environment Minister announced the government is proposing a second phase of spill regulations.
- The Province will be looking for feedback in five areas:
 - Response times, to ensure timely responses following a spill;
 - Geographic response plans, to ensure resources are available to support an immediate response, that take into account unique characteristics of a given sensitive area;
 - Compensation for loss of public and cultural use of land, resources or public amenities in the case of spills;
 - Maximizing application of regulations to marine spills; and
 - Restrictions on the increase of diluted bitumen (“dilbit”) transportation until the behaviour of spilled bitumen can be better understood and there is certainty regarding the ability to adequately mitigate spills.
- The BC Government announced it will produce an intentions paper with an overview of proposed regulations for public comment by the end of February.
- Alberta objected to the proposal and claimed that it was unconstitutional.
- On February 1st, Alberta announced it was ceasing talks on upgrading the existing electricity intertie between BC and Alberta.
- On February 7th, Alberta announced that it will cease all purchase of BC wine. In 2017 \$70 million was paid to BC producers for wine shipped to Alberta.
- The move is a violation of AB obligations under both the New West Partnership and the Canadian Free Trade Agreement.
- On December 19, 2017 the Federal Government announced funding for oil spill research “to bring scientists together to improve our collective understanding of how oil spills behave, how best to clean and contain them, and how to best minimize their environmental impacts.”
- On Feb 12, the Prime Minister said “John Horgan is actually trying to scuttle our national plan on fighting climate change. By blocking the Kinder Morgan pipeline, he’s putting at risk the entire national climate change plan because Alberta will not be able to stay on if the Kinder Morgan pipeline doesn’t go through.

Reference Question

Highlights:

- BC has presented a reference question to the BC Court of Appeal.
- The reference includes a proposed amendment to the Environmental Management Act and asks the court three questions to confirm validity,

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Solution:

- The people of B.C. expect us to defend our province from the devastating consequences of an oil spill on our environment, our economy and our coast.
- A single spill of diluted bitumen would threaten tens of thousands of jobs and billions of dollars of economic activity.
- We have filed a reference case with the BC Court of Appeal to affirm BC's right, within our jurisdiction, to defend our interests.
- We have put forth a very clear amendment to the Environmental Management Act and posed clear questions. In essence:
 - Can the province introduce this law to regulate heavy oil?
 - Does it matter if it comes through federally regulated infrastructure?
 - Does it conflict with any federal law?
- We are confident in our right to defend BC's interests.

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Quotes:

Reaction to announcement of reference case:

Rachel Notley:

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On risks of diluted bitumen...

- Government of B.C. final argument to NEB on KM:
“One particular challenge to the recovery of diluted bitumen from water arises when the product becomes submerged or sinks. The evidence shows that this may occur in freshwater, and has occurred.”

On Kinder Morgan’s proposed cleanup of diluted bitumen:

“The Province submits that the effectiveness of these techniques has not been proven, particularly in British Columbia’s rivers.” (Final Argument, Jan 11, 2016)

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Background:

- The BC Government has sent a reference to the BC Court of Appeal which consists of a proposed amendment to the Environmental Management Act and three questions to confirm the province's authority to make such a law.
- The federal government announced that it is negotiating financial measures with the company to eliminate investor risk on the project and that it will introduce legislation to affirm the federal government's jurisdictional authority.
- Alberta said they were pleased with federal commitments but that they would proceed with tabling of legislation that could enable restricting oil flows to BC.
- On April 8th, Kinder Morgan announced it was suspending all non-essential spending on the TMX pipeline project due to significant uncertainty.
- The company set a deadline of May 31st for resolution of uncertainty including BC's claiming of jurisdiction to regulate environmental impacts.
- The Federal government said that the pipeline is in the national interest and that it will be built. They said all options are on the table to move it forward.
- The AB Government called on the Federal government to act and brought in legislation to allow them to cut off gasoline supply to BC. They also said they are prepared to invest in the pipeline project.
- The AB and SK bills are not compliant with the constitution which prohibits discrimination between provinces in supply of energy products.
- The Government of BC intervened in Federal Court hearings launched by First Nations challenging the federal government's approval of the project. BC argued that the federal government failed to adequately consider risks to BC.
- On January 30, the BC Government put forward proposals for a series of regulations on spill preparedness and response.
- In response, Alberta announced it was ceasing talks on upgrading the existing electricity intertie between BC and Alberta, and On February 7th, Alberta announced that it would cease all purchase of BC wine.
- The BC government is proceeding with consultations on the first four spill response proposals while referring the contentious one to the courts.
- Alberta dropped retaliatory measures in response to the BC government's announcement that it would put the most controversial proposal to the Courts.

QAs – Reference Question

On the Reference Question...

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Additional QAs

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Page 019 to/à Page 022

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Howlett, Tim GCPE:EX

From: Lloyd, Evan GCPE:EX
Sent: Friday, April 27, 2018 8:36 AM
To: Meggs, Geoff PREM:EX; Aaron, Sage PREM:EX; Howlett, Tim GCPE:EX; Zacharias, Mark ENV:EX; Plecas, Bobbi ENV:EX; Nikolejsin, Dave EMPR:EX
Subject: a modest and sensible step

See Anderson, former Fed minister environment

Sent from my iPhone

Begin forwarded message:

CFAX, 26-Apr-2018

I

Anderson - TMP expansion

By CFA Mark Brennae

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Howlett, Tim GCPE:EX

From: Howlett, Tim GCPE:EX
Sent: Thursday, April 26, 2018 4:59 PM
To: Howlett, Tim GCPE:EX
Subject: FW: Speech: Notley - reference question

From: tno@gov.bc.ca [mailto:tno@gov.bc.ca]
Sent: Thursday, April 26, 2018 1:20 PM
Subject: Speech: Notley - reference question

Speech
Notley - Media Conference Â¿ Slave Lake
26-Apr-2018 11:45

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Page 028 to/à Page 031

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Howlett, Tim GCPE:EX

From: Howlett, Tim GCPE:EX
Sent: Thursday, April 26, 2018 12:00 PM
To: Frampton, Caelie ENV:EX; Smith, George AG:EX; Aaron, Sage PREM:EX; Holmwood, Jen PREM:EX
Subject: RE: AB reax:

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From: Howlett, Tim GCPE:EX
Sent: Thursday, April 26, 2018 11:53 AM
To: Frampton, Caelie ENV:EX; Smith, George AG:EX; Aaron, Sage PREM:EX; Holmwood, Jen PREM:EX
Subject: AB reax:

<https://twitter.com/EmmaLGraney/status/989574254537650176>

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Howlett, Tim GCPE:EX

From: Howlett, Tim GCPE:EX
Sent: Thursday, April 26, 2018 11:53 AM
To: Frampton, Caelie ENV:EX; Smith, George AG:EX; Aaron, Sage PREM:EX; Holmwood, Jen PREM:EX
Subject: AB reax:

<https://twitter.com/EmmaLGraney/status/989574254537650176>

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Page 035

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Howlett, Tim GCPE:EX

From: Frampton, Caelie ENV:EX
Sent: Thursday, April 26, 2018 10:22 AM
To: Howlett, Tim GCPE:EX
Subject: Re: note

I didn't get it

Sent from my iPhone

On Apr 26, 2018, at 10:21 AM, Howlett, Tim GCPE:EX <Tim.Howlett@gov.bc.ca> wrote:

Worried I didn't send this. George S is printing two copies to send into both ministers

From: Howlett, Tim GCPE:EX
Sent: Thursday, April 26, 2018 10:21 AM
To: Smith, George AG:EX
Subject: can you print two

Tim Howlett
Issues Manager
Strategic Issues Division, GCPE
250.208.4828

<2018.04.25 QP Environment - Reference Question - draft.docx>

Howlett, Tim GCPE:EX

From: Howlett, Tim GCPE:EX
Sent: Thursday, April 26, 2018 10:21 AM
To: Frampton, Caelie ENV:EX
Subject: note
Attachments: 2018.04.25 QP Environment - Reference Question - draft.docx

Worried I didn't send this. George S is printing two copies to send into both ministers

From: Howlett, Tim GCPE:EX
Sent: Thursday, April 26, 2018 10:21 AM
To: Smith, George AG:EX
Subject: can you print two

Tim Howlett
Issues Manager
Strategic Issues Division, GCPE
250.208.4828

Howlett, Tim GCPE:EX

From: Smith, George AG:EX
Sent: Wednesday, April 25, 2018 3:58 PM
To: Howlett, Tim GCPE:EX
Subject: FW: 20180426_BG_AG_Reference Question_V1
Attachments: 20180426_BG_AG_Reference Question_V1.docx

From: Eby, David AG:EX
Sent: Wednesday, April 25, 2018 3:49 PM
To: Smith, George AG:EX
Subject: 20180426_BG_AG_Reference Question_V1

Backgrounder.

Howlett, Tim GCPE:EX

From: Howlett, Tim GCPE:EX
Sent: Wednesday, April 25, 2018 8:57 AM
To: Howlett, Tim GCPE:EX
Subject: 20180424 - Reference Case QA
Attachments: 20180424 - Reference Case QA.docx; ATT00001.txt

Howlett, Tim GCPE:EX

From: Howlett, Tim GCPE:EX
Sent: Sunday, April 22, 2018 9:54 PM
To: Hannah, Matt GCPE:EX; Smith, George AG:EX
Subject: notes on Comeau decision

Below is a note on the Comeau Decision and suggested lines.
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Ultimately it doesn't impact significantly on the reference case as the case didn't deal with competing federal and provincial jurisdiction

Comeau Decision from Supreme Court of Canada

Background:

-
- In a unanimous ruling,
- the Supreme Court found that provincial liquor laws do not conflict with constitutional protections for the flow of trade.
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-
- Gerard Comeau is a New Brunswick man who was ticketed for bringing alcohol from Quebec in excess of New Brunswick limits.
-
-
-
- He launched a court challenge
- based on section 121 of the Constitution, which states that goods that are grown, produced or manufactured in any province shall be “admitted free into each of the other Provinces.”
-
-
- The Attorney General
- of BC intervened in the case to argue that NB's provincial liquor laws should be upheld as they have a legitimate policy purpose.
-

-
- In their ruling the Court
- notes that provincial regulations may impact trade so long as they have some other primary purpose (e.g. public health) and are not intended to block trade.
-
-
- The BC Wine Institute
- expressed disappointment with the ruling and said they will continue to work with industry partners and federal and provincial governments to remove barriers to allow direct to consumer shipping of wine.
-
-
- The Court stated that
- provincial governments have the autonomy "to develop their societies within their respective spheres of jurisdiction."
-
-
-
- However, the
- case did not deal with competing federal and provincial jurisdiction and so does not impact directly on BC's effort to affirm it's jurisdiction to regulate environmental impacts of federally regulated projects.
-
-
- The Court made a point of underlining
- that provincial measures cannot be used to punish another province which signals trouble for Alberta's proposed gas restrictions.
-

Message:

-
- We
- are taking the time to review the decision.
-
-
- The Attorney General noted that the ruling

- seems to have a message for Alberta with the Court stating that provinces can't block trade in an attempt to punish other provinces.
-
-
- We're
- committed to expanding markets for BC wine, beer and spirits, and that's why we showcased BC wines on our trade mission this past January in Japan and Korea.
-
-
-
- Our
- government is working to helping all BC businesses diversify and expand into new markets worldwide, so they can grow and create jobs in BC.
-

From: Howlett, Tim GCPE:EX
Sent: Friday, April 13, 2018 10:52 AM
To: Kristianson, Eric GCPE:EX; Lloyd, Evan GCPE:EX
Subject: notes that may be useful

TIMELINE

- The Government of BC intervened in Federal Court of Appeal hearings launched by First Nations challenging the federal government's approval of the project. BC argued that the federal government failed to adequately consider risks to BC.
- On January 30th, the BC Government announced its intention to consult the public on proposals for a series of regulations on spill preparedness and response. This included considering a proposal to restrict increase in bitumen transport until it could be assured that it could be safely cleaned up.
- In response, Alberta announced it was ceasing talks on upgrading the existing electricity intertie between BC and Alberta, and On February 7th, Alberta announced that it would cease all purchase of BC wine.
- On February 22nd, the BC Government announced it would proceed with consultations on the first four spill response proposals while sending the contentious issue to the courts in a reference case to confirm BC's jurisdiction to regulate environmental impacts.
- Alberta responded by rescinding its wine boycott and resuming electricity talks. The Alberta Premier said:

“B.C. is stepping back from the brink and abiding by the law, and this is a good thing. [...] What we are suggesting is that we're not too worried. As long as they're prepared to abide by the rule of law, we're confident in what the rule of law really is” (Feb 22).
- The Alberta Throne Speech said that the government would introduce legislation to allow it to restrict the flow of oil and gasoline to BC, if BC were to take “extreme and illegal actions”.
- BC has not taken any further actions since announcing that it would refer the matter to the courts.

- On April 8th, Kinder Morgan announced it was suspending all non-essential spending on the TMX pipeline project due to uncertainty. The company set a deadline of May 31st for resolution of uncertainty and implied the project would not proceed otherwise.
- Alberta responded by saying that it will imminently introduce legislation to allow it to “impose economic consequences” on BC.
- Legal experts have said that restricting the flow of oil or gasoline to BC would be illegal and violate the constitution which prevents discrimination in pricing or supply of goods to any province.
- Notley had previously criticized the idea when it was proposed by Jason Kenney saying:
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- On April 10th, the AB Energy Minister put a bill on Notice entitled *Bill 12 Preserving Canada's Economic Prosperity Act*.
- Premier Notley described the bill in an interview with CP on April 11:

She is introducing a bill next week to give her the power to limit oil to B.C., and says it will involve imposing new conditions on export licences.

"It would, as a result, allow us to direct the export of the product in a way that allows us to get the best price for the product and meets other generalized objectives," Notley said Wednesday on a conference call from Toronto.

"That could include a number of things both restricting what goes in certain directions as well as suggesting certain mechanisms for it to be transported."

250.208.4828

Howlett, Tim GCPE:EX

From: Howlett, Tim GCPE:EX
Sent: Wednesday, February 28, 2018 8:12 AM
To: Machell, Aileen GCPE:EX
Subject: FW: KMs_QAs-Premier-ProtectingTheCoast-REVISEDFINAL
Attachments: KMs_QAs-Premier-ProtectingTheCoast-REVISEDFINAL.docx

From: Aaron, Sage PREM:EX
Sent: Thursday, February 22, 2018 5:17 PM
To: Howlett, Tim GCPE:EX
Subject: FW: KMs_QAs-Premier-ProtectingTheCoast-REVISEDFINAL

Sage
s.17

From: Aaron, Sage PREM:EX
Sent: Thursday, February 22, 2018 4:17 PM
Subject: KMs_QAs-Premier-ProtectingTheCoast-REVISEDFINAL

Revised QAs – please replace last version

Howlett, Tim GCPE:EX

From: Howlett, Tim GCPE:EX
Sent: Monday, February 26, 2018 12:26 PM
To: Frampton, Caelie ENV:EX; Xia, Eveline ENV:EX; Crebo, David GCPE:EX
Subject: new note
Attachments: 2018.02.26 QP Environment-Protecting BC interests-FINAL.docx

Tim Howlett
Issues Manager
Strategic Issues Division, GCPE
250.208.4828

Howlett, Tim GCPE:EX

From: Howlett, Tim GCPE:EX
Sent: Thursday, February 22, 2018 5:20 PM
To: Aaron, Sage PREM:EX
Subject: RE: KMs_QAs-Premier-ProtectingTheCoast-REVISEDFINAL

Thanks

From: Aaron, Sage PREM:EX
Sent: Thursday, February 22, 2018 5:17 PM
To: Howlett, Tim GCPE:EX
Subject: FW: KMs_QAs-Premier-ProtectingTheCoast-REVISEDFINAL

Sage
s.17

From: Aaron, Sage PREM:EX
Sent: Thursday, February 22, 2018 4:17 PM
Subject: KMs_QAs-Premier-ProtectingTheCoast-REVISEDFINAL

Revised QAs – please replace last version

Howlett, Tim GCPE:EX

From: Howlett, Tim GCPE:EX
Sent: Thursday, February 22, 2018 5:20 PM
To: Machell, Aileen GCPE:EX; Matthen, Sheila GCPE:EX; MacDonald, Alex GCPE:EX
Subject: FW: KMs_QAs-Premier-ProtectingTheCoast-REVISEDFINAL
Attachments: KMs_QAs-Premier-ProtectingTheCoast-REVISEDFINAL.docx

From: Aaron, Sage PREM:EX
Sent: Thursday, February 22, 2018 5:17 PM
To: Howlett, Tim GCPE:EX
Subject: FW: KMs_QAs-Premier-ProtectingTheCoast-REVISEDFINAL

Sage
s.17

From: Aaron, Sage PREM:EX
Sent: Thursday, February 22, 2018 4:17 PM
Subject: KMs_QAs-Premier-ProtectingTheCoast-REVISEDFINAL

Revised QAs – please replace last version

Howlett, Tim GCPE:EX

From: Hannah, Matt GCPE:EX
Sent: Thursday, February 22, 2018 3:33 PM
To: Smith, George AG:EX; Howlett, Tim GCPE:EX; Frampton, Caelie ENV:EX
Subject: Fwd: Upcoming from AB

Matt Hannah
778.584.1249

Begin forwarded message:

From: "Meggs, Geoff PREM:EX" <Geoff.Meggs@gov.bc.ca>
Date: February 22, 2018 at 3:32:46 PM PST
To: "Lloyd, Evan GCPE:EX" <Evan.Lloyd@gov.bc.ca>, "Yuma Morisho, Okenge PREM:EX" <Okenge.YumaMorisho@gov.bc.ca>, "Wright, Don J. PREM:EX" <Don.J.Wright@gov.bc.ca>, "Aaron, Sage PREM:EX" <Sage.Aaron@gov.bc.ca>, "Hannah, Matt GCPE:EX" <Matt.Hannah@gov.bc.ca>, "McConnell, Sheena PREM:EX" <Sheena.McConnell@gov.bc.ca>
Subject: Upcoming from AB

Upcoming from Notley:

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Advice to Minister

- The people of BC are looking to our government to make sure any spill of diluted bitumen does not threaten our province's economy, environment and our coast.
- We have a responsibility to ensure the best possible protections are in place to protect the tens of thousands of jobs that rely on BC's clean environment.
- We have proposed for consultation a number of measures on spill preparedness and response that would apply to anyone looking to ship hazardous materials through our province.
- We are moving forward in the coming weeks with consultation on the first four measures:
 - Spill response times
 - Geographic response plans
 - Compensation for loss of public and cultural use of land
 - Application of regulations to marine spills
- We are confident in our right to protect BC's environment, economy and coast from the consequences of a diluted bitumen spill.
- We are retaining expert legal counsel to ready that reference and confirm our rights in court.

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- We've been clear from the start that the appropriate place to resolve this is in the courts.
- We have said all along that we will defend BC's interests and we are confident that the Courts will confirm we have the jurisdiction to do so.

QUESTIONS & ANSWERS

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What about the scientific panel – will that still go ahead?

- Yes, we have been clear that there are gaps in the science with regard to the behaviour of diluted bitumen and whether and how it can be cleaned up.

Advice to Minister

- The Royal Society of Canada has clearly identified that there are gaps, and the Federal Government has agreed and actually committed funding to research this problem.
- We will have further details on this going forward.

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Reference Question

Key Messages: Province submits court reference to protect B.C.'s coast

- The government of British Columbia submitted a reference question to the B.C. Court of Appeal to affirm its right to protect B.C.'s coast and inland waters from the threat of a diluted bitumen spill.
- We have asked the courts to confirm B.C.'s powers, within our jurisdiction, to defend B.C.'s interests so that there is clarity for today and for generations to come.
- Our government will continue to stand up for the right to protect B.C.'s environment, economy, and coast

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Technical details on reference cases...

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Additional General QAs...

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Faust, Marnie L GCPE:EX

From: Kristianson, Eric GCPE:EX
Sent: Thursday, April 12, 2018 6:03 PM
To: Lloyd, Evan GCPE:EX
Cc: Zadavec, Don GCPE:EX; Robins, Shawn GCPE:EX; Crebo, David GCPE:EX; Haslam, David GCPE:EX
Subject: Draft backgrounder
Attachments: BG KM-Actions to date-v.1.docx

Importance: High

Group,

Attached is a first draft of one of two potential backgrounders for the weekend. They have not been reviewed by program, but I want to get Evan and the Po's take before we go back to program.

cheers

Eric Kristianson
ADM Strategic Issues
GCPE
s.17

NEWS RELEASE

For Immediate Release
[release number]
[Date]

Office of the Premier
Ministry of Environment

BACKGROUND

BC Government Actions to Date

Since forming government in July, 2017 the province has articulated its commitment to defend B.C.'s interests and protect the coast for the potential impacts of a catastrophic spill of heavy oil or diluted bitumen. At the same time, the province has been acting to fully meet its legal obligations to the proponent of the Trans Mountain Expansion Project. The province's actions to date include:

Continuing Project Permitting Approvals—In total, 1,187 provincial permits will be required for the construction of the Trans Mountain Expansion Project. Government has ensured that all permits have been reviewed in a timely manner and that any permits align with the 37 conditions outlined in the environmental certificate issued by the previous government and the 157 conditions detailed by the National Energy Board. To date:

- 587 permit applications have been submitted to permitting agencies;
- Of these 201 applications have been approved and permits issued;
- 386 applications are being reviewed;
- Approximately 600 applications have not yet been submitted.

Intervening with the Federal Court of Appeal—In August 2017 the province retained Thomas Berger QC as external counsel to government on the Trans Mountain Expansion Project. At Berger's direction, the province sought and was granted intervener status in *Tsleil-Waututh Nation et al. v. Attorney General of Canada et al.*... The case involves 15 applications for judicial review brought by First Nations, the Cities of Vancouver and Burnaby and two environmental organisations of the Governor in Council's decision to cause the National Energy Board (NEB) to issue a Certificate of Public Convenience and Necessity in relation to TMX, and/or in relation to the NEB's report recommending that the Certificate issue for the project.

Intervening in the City of Burnaby's application to the Court of Appeal – In November 2017, external legal counsel for the government asked the National Energy Board to dismiss outright the company's Trans Mountain's suggestion of abridged timelines for future applications by Trans Mountain to challenge decisions of municipalities and the Province in relation to permits for the project. This position was taken to ensure the Province has adequate opportunity to defend its decisions in the future.

Amending the *Environmental Management Act*—In February 2018, the province began public consultations exploring potential changes to the *Environmental Management Act* aimed at ensuring British Columbia was prepared to address the impacts of a catastrophic oil spill. The Ministry is currently considering four policy concepts, including:

- **Response times** to ensure timely responses following a spill;
- **Geographic response plans** to ensure resources are available to support an immediate response that takes into account the unique characteristics of a given sensitive area;
- **Addressing loss of public use** impacts from spills to ensure local communities are compensated for negative impacts from spills, particularly loss of use of public resources (e.g., compensation to a community when access to a beach is limited following a spill);
- **Marine application** of the Ministry's environmental emergency regulatory powers to ensure a consistent high standard of protection in both the marine and terrestrial settings

Developing a Reference Case—

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Contact:
Name
Title
Ministry
Ph. #

Faust, Marnie L GCPE:EX

From: Aaron, Sage PREM:EX
Sent: Thursday, April 12, 2018 6:17 PM
To: Lloyd, Evan GCPE:EX
Subject: FW: QAs, statement & SN
Attachments: KM Q&A.docx; BC Gov News - Premier's statement on Kinder Morgan's decision on the Trans Mountain expansion project; SN KM decision 20180408 Draft FINAL.docx

Sage
s.17

From: Aaron, Sage PREM:EX
Sent: Sunday, April 8, 2018 5:37 PM
To: Oreck, Mira PREM:EX
Subject: QAs, statement & SN

Are actions by your government to blame for this decision?

- Not at all.
- We have simply been standing up for BC's coast and the jobs that depend on it. And we've been doing so in a legal way.
- That's what British Columbians expect.
- The legal action we took was to join cases already being heard.
- Kinder Morgan has been clear in investor calls that the Province has been dealing with permit applications fairly and in a timely manner.
- Ultimately, this is a business decision made in a Texas boardroom.
- It's the latest in a recent history of pipeline projects not proceeding, including Enbridge and Energy East.

The company wants you to eliminate uncertainty and has given you a deadline. How will you respond? Will you cancel the reference case?

- British Columbians won't stand for ultimatums and threats.
- We have been using legal tools to stand up for British Columbians throughout this process. I will always stand up for British Columbians.

Isn't this a blow to our economy? Is this going to hurt BC's investment climate?

- Our economy is strong and is projected to continue growing
- Just last week, Dominion Bond Rating Service affirmed BC's credit rating as the best in Canada because of our strong economic and fiscal plan
- On Friday I was in Prince George at the Council of Forest Industries talking about creating and protecting jobs in forestry
- We're seeing tremendous innovation in our province, including in engineered wood products
- We have seen new investments in tech and trade, like 1,000 new Amazon jobs in Vancouver
- We're creating a positive investment climate in the natural gas sector and we have received positive feedback on that

Is this a threat to Canada's climate action plan?

- It shouldn't be. We expect the federal government to continue with their climate plan.
- Canada's environment and economy shouldn't be settled in a Texas boardroom.
- BC will continue to do its part to fight climate change.

What happens with the reference case on regulating bitumen?

- We have retained expert legal counsel and are preparing a reference case as we have said we would.
- This isn't about any one project, it is about ensuring that the government of BC is able to stand up for British Columbians' interests.
- We have an obligation to protect our land, air and water and the tens of thousands of jobs that depend on them.

Why did you appeal the NEB decision regarding Burnaby?

- We don't think it is appropriate for the NEB to completely set aside bylaws and regulations of any order of government.
- We sought leave to appeal the decision to ignore Burnaby laws and stand up for the rights of municipalities and the province.
- We were disappointed that the Federal Court declined to hear that appeal.
 - *[note: The City of Burnaby has said that it will appeal to the Supreme Court of Canada. The Province has not indicated any intention to participate at this time.]*

Are you worried they will cut off the gas?

- That would be an extreme and likely illegal action.
- It would hurt Albertans more than anyone, and Premier Notley has said this in the past.
 - *"The kinds of things that Mr. Kenney is proposing is akin to 'cutting off your face to spite your nose'. **It is something the industry doesn't want and something that would actually hurt Albertans.** That's not what we're doing."* (Feb 1 2018, in response to Kenney proposal to turn off the taps)
- We have taken a responsible approach and I would hope that everyone else will too.
- If Alberta does take this extreme step, we will use all legal options to stand up for British Columbians, and we will succeed.

Are you worried about putting taxpayers at risk of a lawsuit?

- Not at all. Everything we have done is within the legal rights of British Columbia.
- We've been diligent in standing up for British Columbians while ensuring they are not at risk.
- The pace and process of permitting did not change with the change of government and Kinder Morgan has recognized this.
- The legal action we've taken is to join court cases that were already being heard.,

Do you have any involvement in protests?

- None at all.
- Many British Columbians are passionate about this issue, and they have chosen to make their voices heard.

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Faust, Marnie L GCPE:EX

From: Kristianson, Eric GCPE:EX
Sent: Friday, April 13, 2018 8:47 AM
To: Lloyd, Evan GCPE:EX; Zadravec, Don GCPE:EX
Cc: Robins, Shawn GCPE:EX; Crebo, David GCPE:EX
Subject: Revised backgrounder
Attachments: BG KM-Actions to date-v.4.docx

Evan, I've incorporated the feedback from Crebo and Haslam.s.14

s.14 That said, we'll still need guidance as to what is appropriate.

Eric Kristianson
ADM Strategic Issues
GCPE
s.17

Faust, Marnie L GCPE:EX

From: Kristianson, Eric GCPE:EX
Sent: Friday, April 13, 2018 10:00 AM
To: Lloyd, Evan GCPE:EX
Subject: BN
Attachments: KM Actions to date BN.docx

Importance: High

Eric Kristianson
ADM Strategic Issues
GCPE
s.17

NEWS RELEASE

For Immediate Release
[release number]
[Date]

Office of the Premier
Ministry of Environment

BACKGROUND

BC Government Actions to Date

Since forming government in July, 2017 the province has expressed its commitment to defend B.C.'s interests and protect inland and coastal waters and the coastal economy from the potential impacts of a catastrophic spill of heavy oil or diluted bitumen. At the same time, the province has been acting to fully meet its legal obligations to the proponent of the Trans Mountain Expansion Project. The province's actions to date include:

Continuing Project Permitting Approvals—In total, 1,187 B.C. provincial permits will be required for the construction of the Trans Mountain Expansion Project. Government has ensured that all permits have been reviewed in a timely manner and that any permits align with the 37 conditions outlined in the environmental certificate issued by the previous government and the 157 conditions detailed by the National Energy Board. To date:

- 587 permit applications have been submitted to permitting agencies;
- Of these 201 applications have been approved and permits issued;
- 386 applications are being reviewed;
- Approximately 600 applications have yet to be submitted by Kinder Morgan.

Intervening with the Federal Court of Appeal—In August 2017 the province retained Thomas Berger QC as external counsel to government on the Trans Mountain Expansion Project. At Berger's direction, the province sought and was granted intervener status in *Tsleil-Waututh Nation et al. v. Attorney General of Canada et al.* The case involves 15 applications for judicial review brought by First Nations, the Cities of Vancouver and Burnaby and two environmental organisations of the Governor in Council's decision to cause the National Energy Board (NEB) to issue a Certificate of Public Convenience and Necessity in relation to TMX, and/or in relation to the NEB's report recommending that the Certificate issue for the project.

Intervening in the City of Burnaby's application to the Court of Appeal – In November 2017, external legal counsel for the government asked the National Energy Board to dismiss outright the company's Trans Mountain's suggestion of abridged timelines for future applications by Trans Mountain to challenge decisions of municipalities and the Province in relation to permits for the project. This position was taken to ensure the Province has adequate opportunity to defend its decisions in the future.

Amending the *Environmental Management Act*—In February 2018, the province began public consultations exploring potential changes to the *Environmental Management Act* aimed at ensuring British Columbia was prepared to address the impacts of a catastrophic oil spill. The Ministry of Environment is currently considering four policy concepts, including:

- **Response times** to ensure timely responses following a spill;
- **Geographic response plans** to ensure resources are available to support an immediate response that takes into account the unique characteristics of a given sensitive area;
- **Addressing loss of public use** impacts from spills to ensure local communities are compensated for negative impacts from spills, particularly loss of use of public resources (e.g., compensation to a community when access to a beach is limited following a spill);
- **Marine application** of the Ministry's environmental emergency regulatory powers to ensure a consistent high standard of protection in both the marine and terrestrial settings

Developing a Reference Case—The province has engaged Joe Arvay QC as external legal counsel to provide advice on a potential constitutional reference case.

Contact:
Name
Title
Ministry
Ph. #

Faust, Marnie L GCPE:EX

From: Kristianson, Eric GCPE:EX
Sent: Friday, April 13, 2018 10:40 AM
To: Lloyd, Evan GCPE:EX
Subject: BN
Attachments: BN-KM Project Economics.docx

Importance: High

Eric Kristianson
ADM Strategic Issues
GCPE
s.17

BRIEFING NOTE FOR INFORMATION

Confidential Advice to Premier

Date: April 13, 2018
Prepared For: Hon. John Horgan, Premier
Title: BC Actions to date vis a vis the Trans Mountain Expansion Project

Since forming government in July, 2017 the province has expressed its commitment to defend B.C.'s interests and protect inland and coastal waters and the coastal economy from the potential impacts of a catastrophic spill of heavy oil or diluted bitumen. At the same time, the province has been acting to fully meet its legal obligations to the proponent of the Trans Mountain Expansion Project. The province's actions to date include:

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s.14



**Government Communications
and Public Engagement**

s.14

PREPARED BY:

Eric Kristianson
Strategic Issues Division
s 17

APPROVED BY:

First Name Last Name, ADM
Division
Evan Lloyd, Deputy Minister

DATE APPROVED:

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Withheld pursuant to/removed as

s.14

Page 083

Withheld pursuant to/removed as

s.14;s.13

Page 084

Withheld pursuant to/removed as

s.14

Faust, Marnie L GCPE:EX

From: Kerr, Grant GCPE:EX
Sent: Friday, April 13, 2018 2:37 PM
To: Lloyd, Evan GCPE:EX; Haslam, David GCPE:EX
Cc: Kristianson, Eric GCPE:EX; Zadravec, Don GCPE:EX; Kerr, Grant GCPE:EX; Beaupre, Darren GCPE:EX; Dalal, Suntanu GCPE:EX; Crebo, David GCPE:EX; Stagg, Linda R GCPE:EX; Carruthers, Dana GCPE:EX; Horlor, Shannon GCPE:EX; McKill, Colin GCPE:EX
Subject: FW: DRAFT: Update on Trans Mountain expansion project permitting process
Attachments: DRAFT.pdf

Hi Evan and David,

On your approval, going everywhere, including the gallery, business and energy media.

Note: Changed ministry list to bullets for ease of reading and because oil and gas commission was in there, changed wording to "organizations", rather than "ministries".

See what you think.

Grant

-----Original Message-----

From: Kerr, Grant GCPE:EX [<mailto:Grant.Kerr@gov.bc.ca>]
Sent: Friday, April 13, 2018 2:36 PM
To: Kerr, Grant GCPE:EX
Subject: DRAFT: Update on Trans Mountain expansion project permitting process

Please refer to the files attached to this email. The following is the summary of the News Release

NR Number: Not Approved

NR Type: Information Bulletin

State: Planned

Planned Release Date: April 13, 2018 at 3:05 pm

Media Distribution Lists: 000.0 - Victoria, BUSIN_BUSINESS, ENERG, ETHALL_ALL ETHNIC, LEGIS_PRESS GALLERY, MEDIA, PROVI_PROVINCE WIDE

No Lead Organization

Headline: Update on Trans Mountain expansion project permitting process

This email was auto-generated.

Not Approved

April 13, 2018

Ministry of Energy, Mines and Petroleum Resources

INFORMATION BULLETIN

Update on Trans Mountain expansion project permitting process

VICTORIA - In total, 1,187 provincial permits are required for the Trans Mountain expansion project, with many involving First Nations consultation.

To date:

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- * Approximately another 600 permits have yet to be submitted by Kinder Morgan Canada Ltd.

All permits submitted must align with the 37 conditions outlined in the provincial environmental certificate, as well as the 157 conditions detailed in the National Energy Board's approval.

Multiple organizations are involved, including:

- * Ministry of Forests, Lands, Natural Resource Operations and Rural Development

- * Ministry of Environment and Climate Change Strategy (including BC Parks)

- * Ministry of Transportation and Infrastructure

- * BC Oil and Gas Commission

The Ministry of Energy, Mines and Petroleum Resources, along with the Ministry of Agriculture, have a dedicated project office supporting these ministries and their permitting requirements.

Contact:

Suntanu Dalal
Media Relations
Ministry of Energy, Mines and Petroleum Resources
250 952-0628

Connect with the Province of B.C. at: <http://news.gov.bc.ca/connect>

INFORMATION BULLETIN

Not Approved
April 13, 2018

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Connect with the Province of B.C. at: news.gov.bc.ca/connect

Faust, Marnie L GCPE:EX

From: Meggs, Geoff PREM:EX
Sent: Friday, April 13, 2018 2:15 PM
To: Aaron, Sage PREM:EX; Lloyd, Evan GCPE:EX
Subject: RE: Blog Post - PJH Defending the Coast D3CM_KH_Clean

Please wait for PJH's approval. I think it's good but should include a clearer reference along the lines of "Others disagree. That's their right too. That's what we've promised to prepare a court reference to allow a judge to determine if our proposed regulations are within our provincial jurisdiction."

g

GEOFF MEGGS

Chief of Staff, Office of the Premier
West Annex, Parliament Buildings,
501 Belleville St, Victoria, BC V8V 2L8
s.17

From: Aaron, Sage PREM:EX
Sent: Friday, April 13, 2018 2:03 PM
To: Meggs, Geoff PREM:EX; Lloyd, Evan GCPE:EX
Subject: Blog Post - PJH Defending the Coast D3CM_KH_Clean
Importance: High

Hi folks

First full draft of blog. Thoughts?

You can't put a price on who you are

As I travel to Ottawa this weekend to meet with Prime Minister Justin Trudeau and Alberta Premier Rachel Notley, I'll be thinking of the Heiltsuk First Nation.

I visited their territory after the grounding of the Nathan E Stewart tugboat, which spilled more than 100,000 litres of diesel fuel into coastal waters near Bella Bella. It was an experience I'll never forget.

The diesel slick was everywhere you looked, and the smell from the fumes was overwhelming. From our small boat, we watched the waves push diesel over clam beds that had been harvested by the Heiltsuk for centuries.

The community had been working for days alongside emergency responders to try and contain the spill and protect the clam beds. People were exhausted, and beside themselves with grief.

The devastation I saw that day is considered by some to be a small spill. s.13
s.13 And the Heiltsuk will live with the consequences for many years to come.

I'm travelling to Ottawa this weekend to stand up for British Columbia.

I'll be fighting for our coast, the tens of thousands of BC jobs that depend on oil-free coastal and inland waters, and the millions in economic activity generated by industries like tourism, film and fisheries.

I'll be representing people who are worried about a seven-fold increase in tanker traffic and the impact a heavy oil spill would have on our economy and environment.

Anyone who has walked Long Beach in Tofino, gone berry picking in Haida Gwaii, or fished for salmon in the Skeena and Fraser rivers understands what we could lose.

Anyone who lives near the proposed pipeline in Burnaby, spends summer days in English Bay, or takes a ferry through the Salish Sea understands what we could lose:

Whether a community was built on forestry or mining, agriculture or small business, an oil spill will hurt all British Columbians, cost us tens of thousands of good-paying jobs, and make it harder for people to get ahead.

The national interest is not being served if we force the risk of catastrophe on unwilling communities. Nor does it advance true and meaningful reconciliation with Indigenous peoples.

Defending our coast means defending our people, communities, and our way of life.

BC is squarely within its rights to do so.

s.13

We won't just sit back and watch things happen, giving way to interests that are not our own.

We're taking responsibility and fighting for BC's interests.

That's what our government was elected to do. That's what we've been doing. And we're going to keep doing it, as best we can, for all of BC.

We believe that people should have a say in the things that happen here. That's why we want to consult British Columbians about the transport of diluted bitumen over our rivers and streams by rail car, tanker or pipeline.

Some people take issue with BC acting in its own jurisdiction. The best way to resolve those concerns is not to bully, threaten, or pit the people of one province against another.

The way to resolve is through the courts -- clearly, fairly and decisively.

No matter how much is at stake in this dispute, you can't put a price on who you are.

The interests of British Columbians -- and all Canadians -- should come before those in Texas boardrooms.

I'm proud to be a British Columbian, to stand up for the people of this province, and defend our economy and our coast -- now, and for future generations.

Faust, Marnie L GCPE:EX

From: Aaron, Sage PREM:EX
Sent: Friday, April 13, 2018 2:03 PM
To: Meggs, Geoff PREM:EX; Lloyd, Evan GCPE:EX
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Attachments: Blog Post - Defending the Coast D3CM_KH_Clean.docx

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Page 094

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s.14;s.16

Page 095

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Page 096

Withheld pursuant to/removed as

s.14;s.16

Page 097 to/à Page 098

Withheld pursuant to/removed as

s.14

Faust, Marnie L GCPE:EX

From: Wright, Don J. PREM:EX
Sent: Thursday, April 12, 2018 7:18 PM
To: Nikolejsin, Dave EMPR:EX; Zacharias, Mark ENV:EX; Plecas, Bobbi ENV:EX; Lloyd, Evan GCPE:EX
Subject: Re: Request for information

Thanks Dave. Don

From: Dave Nikolejsin <Dave.Nikolejsin@gov.bc.ca>
Date: Thursday, April 12, 2018 at 5:37 PM
To: Don Wright <don.j.wright@gov.bc.ca>, Mark Zacharias <Mark.Zacharias@gov.bc.ca>, Bobbi Plecas <Bobbi.Plecas@gov.bc.ca>, Evan Lloyd <Evan.Lloyd@gov.bc.ca>
Subject: Fwd: Request for information

Sending this before I have read it as I am just between flights.

Dave Nikolejsin
Deputy Minister
Energy, Mines and Petroleum Resources

Begin forwarded message:

From: "Beltrano, Linda EMPR:EX" <Linda.Beltrano@gov.bc.ca>
Date: April 12, 2018 at 5:26:55 PM PDT
To: "Nikolejsin, Dave EMPR:EX" <Dave.Nikolejsin@gov.bc.ca>
Cc: "Piccinino, Ines EMPR:EX" <Ines.Piccinino@gov.bc.ca>
Subject: Request for information

Dave
This is our response to your three questions.

Linda Beltrano
Executive Lead
Oil Infrastructure Group
Ministry of Energy, Mines & Petroleum Resources
778-698-3661

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s.14;s.16

Page 101

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Page 102

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Page 103 to/à Page 104

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Page 105 to/à Page 106

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Page 107 to/à Page 109

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Page 111 to/à Page 113

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Page 114

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Page 115 to/à Page 123

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Page 124

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Page 125 to/à Page 139

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Page 140

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Page 141 to/à Page 147

Withheld pursuant to/removed as

s.14;s.13

Faust, Marnie L GCPE:EX

From: Hannah, Matt GCPE:EX
Sent: Thursday, April 12, 2018 3:26 PM
To: Lloyd, Evan GCPE:EX; Aaron, Sage PREM:EX
Subject: RE: KM materials
Attachments: 2018.04.11 QP Environment - Risk of Spill to Economy.docx; 2018.04.10 QP Environment-Kinder Morgan suspension.docx; KM Decision KMs 20180410 v3.docx

Some docs attached.

-----Original Message-----

From: Lloyd, Evan GCPE:EX
Sent: Thursday, April 12, 2018 3:06 PM
To: Aaron, Sage PREM:EX; Hannah, Matt GCPE:EX
Subject: KM materials

Can you please flip me any/all current KM message materials developed for PJH and/or Caucus?
Working on deadline to help with materials for Sunday...
Evan

Sent from my iPhone

Risk of Spill to Economy

Highlights:

- A single spill of diluted bitumen would put at risk tens of thousands of jobs that depend on BC's coast.

Contrast:

- A single spill on our coast would cost tens of thousands of existing jobs in tourism, film and the seafood industry.

s.13

Solution:

What's at stake:

- A single spill of diluted bitumen would put at risk tens of thousands of jobs that rely on our coast.
- Jobs in Tourism. We have over 19,000 tourism businesses employing 133,000 people here in BC.
- Tourism generates \$17 billion each year. (2016, Destination BC)
- This year, 895,000 people are expected to pass through Vancouver on cruise ships. That's up seven percent and the highest since 2010. (2018, VFPA)
- The Vancouver Fraser Port Authority estimates these visits will directly contribute \$840 million to our economy.

- Our seafood sector accounts for \$1.2 billion in sales in BC and \$1.3 billion in exports. And exports are growing - up 17% in 2016 (2016, BC Stats)
- Fisheries and seafood contributes more than \$660 million each year to our GDP, employs 14,000 people and pays nearly \$400 million in wages (2011, BC Stats).
- The wild salmon economy alone employs 10,000 British Columbians in communities up and down the coast. (2017, Pacific Salmon Commission)
- Sport fishing employs 8,400 people and generates close to a billion dollars each year in revenues. (2011, BC Stats)
- Our film industry supports more than 60,000 direct and indirect jobs. (CMPA)
- The City of Vancouver commissioned an economic study for the NEB review looking at just five ocean-dependent activities: Commercial fishing, port activities, inner-harbour transportation, tourism and recreation.
- For Vancouver alone, these five ocean-dependent activities generate more than \$6.7 billion in economic activity and support more than 36,000 jobs.
- Their modelling shows that a single spill could wipe out more than \$1.2 billion in economic activity and over 12,000 jobs.

Kinder Morgan suspension

Highlights:

- Kinder Morgan announced it has suspended all non-essential spending on the TMX project citing uncertainty created by actions of the BC government.
- Alberta says it will introduce legislation next week to enable it to place economic consequences on BC.
- Notley said she had discussed, with the federal government, the possibility of withholding transfer payments to BC and that they are open to it.
- The Opposition Leader has said that the government has created uncertainty for investors in BC and picked a fight with Alberta and the Federal Government.

s.13

Solution:

- British Columbians want to ensure that our lands and waters are protected.
- They expect their government to stand up for their interests and for the thousands of jobs that rely on our clean environment.
- We've taken a consistent and responsible approach.
- Our government has continued to process permit approvals in a timely manner and acted well within the law.
- At issue is our desire to ensure that we fill the gaps in the science around effects of a diluted bitumen spill, and that we can be sure it can be cleaned up.
- We referred the contentious issue to the courts where any dispute about jurisdiction belongs.

s.13

- Page 153 of 256 GCP-2018-83318

Page 154

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s.13

Quotes:

Reaction to announcement of reference case:

Rachel Notley:

Copyright

- Government of B.C. final argument to NEB on KM:

“One particular challenge to the recovery of diluted bitumen from water arises when the product becomes submerged or sinks. The evidence shows that this may occur in freshwater, and has occurred.”

On Kinder Morgan’s proposed cleanup of diluted bitumen:

“The Province submits that the effectiveness of these techniques has not been proven, particularly in British Columbia’s rivers.” (Final Argument, Jan 11, 2016)

Page 157

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Background:

- On April 8th, Kinder Morgan announced it was suspending all non-essential spending on the TMX pipeline project due to significant uncertainty.
- The company set a deadline of May 31st for resolution of uncertainty including BC's claiming of jurisdiction to regulate environmental impacts.
- The Federal government said that the pipeline is in the national interest and that it will be built. They said all options are on the table to move it forward.
- The AB Government called on the Federal government to act and reiterated they will bring in legislation to allow them to impose economic consequences on BC. They also said they are prepared to invest in the pipeline project.
- The Government of BC intervened in Federal Court hearings launched by First Nations challenging the federal government's approval of the project. BC argued that the federal government failed to adequately consider risks to BC.
- The BC Government also intervened in NEB hearings over a request from Kinder Morgan to ignore bylaws and permitting requirements of the City of Burnaby. When the NEB ruled in the company's favour, BC sought leave to appeal the decision at the Federal Court of Appeal but was not granted leave.
- On January 30, the BC Government put forward proposals for a series of regulations on spill preparedness and response.
- In response, Alberta announced it was ceasing talks on upgrading the existing electricity intertie between BC and Alberta, and On February 7th, Alberta announced that it would cease all purchase of BC wine.
- The BC government is proceeding with consultations on the first four spill response proposals while referring the contentious one to the courts.
- Alberta dropped retaliatory measures in response to the BC government's announcement that it would put the most controversial proposal to the Courts.
- BC has obtained expert legal counsel to prepare a reference to the Courts to confirm the province's right to regulate to protect the environment.
- The Alberta Throne Speech said the government would introduce legislation to allow it to restrict the flow of oil and gasoline to BC.
- Legal experts have questioned Alberta's ability to restrict oil flow to BC and most believe they could only restrict oil to all of Canada on an equal basis.

Key Messages

A single spill could be devastating for key industries like tourism, fisheries, and film.

We are doing everything we can to defend our coast, protect our land and waters, communities, and economy.

We're taking responsible legal action to stand up for B.C.'s interests:

- So we can grow the economy while protecting the environment.
- So communities up and down the coast can continue to thrive.
- So we can defend B.C. against the risks of a diluted bitumen spill in the Salish Sea.

The federal approval process failed to consider B.C.'s interests and the risk to our province. We joined the federal court challenge, already underway, to make that point.

s.13

Page 160

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s.13

Are you concerned by Rachel Notley's threats to turn off the top?

- That would be an extreme act that would hurt Albertans more than anyone.
- It's also likely illegal. If she did do that, we will stand up for British Columbians through the proper channels, and we will succeed.
- We have been responsible in our approach and consistently acted within the law. We expect other provinces to do the same.

s.13

How do you respond to claims you are undermining confederation?

- We have always approached this issue respectfully with our neighbours.
- We are proceeding to court, which is where these disagreements should be decided.
- Our country has had disagreements before. Our strength is in our ability to work through them respectfully, and that is what we intend to do.

s.13

Faust, Marnie L GCPE:EX

From: Dalzell, Danielle GCPE:EX
Sent: Wednesday, April 25, 2018 11:14 AM
To: GCPE Editors
Cc: Holmwood, Jen PREM:EX; Aaron, Sage PREM:EX; Lloyd, Evan GCPE:EX; Devereux, Rick GCPE:EX
Subject: TO GO OUT AT 2:40 today - MA - Reference Question - 25APRIL18 - DRAFT V1
Attachments: MA - Reference Question - 25APRIL18 - DRAFT V1.docx

Hello,

The attached media advisory needs to go out at 2:40 p.m. today.

Jen Holmwood will provide final PO approval.

Thank you,
Danielle

MEDIA ADVISORY

For Immediate Release

April 25, 2018

Office of the Premier
Ministry of Attorney General
Ministry of Environment & Climate Change
Strategy

**MEDIA ADVISORY – Office of the Premier; Ministry of Attorney General; Ministry of
Environment & Climate Change Strategy – Victoria, Vancouver**

VICTORIA – Premier John Horgan, David Eby, Minister of Attorney General, and George Heyman, Minister of Environment & Climate Change Strategy will make an announcement regarding environmental protection.

Event Date: Thursday, April 26, 2018

Time:

Technical Briefing: 8:30 a.m.

News Conference: 9:15 a.m.

Locations:

Victoria	Vancouver (*to listen in to technical briefing)
Press Theatre	s.15
West Annex	
Parliament Buildings.	

Special Instructions:

A teleconference line is available for the news conference only to those media who cannot attend in person.

Dial-in information:

In Vancouver: 604-681-0260

From elsewhere in Canada and the U.S., toll-free: 1-877-353-9184

Participant Pass Code: 84061#

Telephone lines will open at 8:50 a.m.

Contacts:

Jen Holmwood
Deputy Communications Director
Office of the Premier
250 818-4881

Media Relations
Ministry of Attorney General
778 678-1572

Media Relations
Environment and Climate Change Strategy
250 953-3834

o

Page 166 to/à Page 172

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s.14

Faust, Marnie L GCPE:EX

From: Lloyd, Evan GCPE:EX
Sent: Tuesday, April 24, 2018 10:51 AM
To: Dalzell, Danielle GCPE:EX; Gibbs, Robb GCPE:EX; Robins, Shawn GCPE:EX; Crebo, David GCPE:EX; Smith, George AG:EX
Subject: FW: Horgan - Feb 22

FYI – the parameters.

From: "Ryckman, Scott GCPE:EX"
Date: Tuesday, April 24, 2018 at 10:44 AM
To: "Lloyd, Gcpe:Ex"
Subject: Horgan - Feb 22

Sent from my BlackBerry 10 smartphone on the TELUS network.

22-Feb-2018, 14:30
Horgan - TMP court reference
Copyright

Page 174 to/à Page 175

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Copyright

Page 176 to/à Page 179

Withheld pursuant to/removed as

s.14

Faust, Marnie L GCPE:EX

From: Dalzell, Danielle GCPE:EX
Sent: Tuesday, April 24, 2018 12:41 PM
To: Gibbs, Robb GCPE:EX
Subject: 20180426_SN_PJH_Reference Question_V1
Attachments: 20180426_SN_PJH_Reference Question_V1.docx

Did you want to have a look at the speaking notes as well?

April 26, 2018

Speaking Notes - Referral of Reference Question to B.C. Court of Appeal

Speech Goals:

- Announce that the government has filed a reference question with the B.C. court of appeal to confirm B.C.'s powers, within our jurisdiction, to defend B.C.'s interests.
- Affirm that our government will continue to stand up to protect B.C.'s environment, economy and coast for now, and for future generations.

Format:

- News Conference in Legislature Press Theatre
- Podium

Audience:

- Media, public

Participants:

- Minister David Eby
- Minister George Heyman

TALKING POINTS BEGIN NEXT PAGE

- Thank you for being here.
- First, I would like to acknowledge that we are on the territories of the Lekwungen speaking peoples, the Songhees and Esquimalt First Nations.
- As anticipated, today our government has submitted a reference question to the B.C. Court of Appeal.
- We committed in February that we would refer this matter to the courts.
- Our government retained constitutional expert Joe Arvay as external counsel to prepare the reference case.
- Today, that case has been filed to confirm B.C.'s powers, within our jurisdiction, to defend B.C.'s interests.
- And to protect B.C.'s environment, economy and coast.
- We hope that this ruling will provide clarity for today and for the generations to come.
- From day one, our government's priority has been to make life better for people in B.C.
- That's why we're tackling problems to make life more affordable, improve services, and build a strong sustainable economy that works for the people who live here.
- And that's why we're standing up for the right to protect B.C.
- A single spill of diluted bitumen would threaten tens of thousands of jobs and billions of dollars of economic activity.
- We have a responsibility to ensure that the best possible protections are in place to protect our coast and inland waters.
- And, we assert the right, and the jurisdiction, to enforce regulations necessary to protect BC's environment and thousands of jobs a clean environment supports.
- This is about the people of British Columbia, and the First Nations who are saying we want to defend our coast, our economy and our way of life.
- Our government will continue to stand up for the people of this province for now, and for future generations.
- I'll now hand it over to Minister Eby to speak to the details of the reference question.

Page 183 to/à Page 184

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s.14

Page 185 to/à Page 187

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s.14;s.13

Page 188 to/à Page 190

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NEWS RELEASE

For Immediate Release
2018PREM0019-000742
April 26, 2018

Office of the Premier
Ministry of Attorney General
Ministry of Environment and Climate Change Strategy

Province submits court reference to protect B.C.'s coast

VICTORIA – The Government of British Columbia has submitted a reference question to the B.C. Court of Appeal today to affirm its right to protect B.C. from the threat of a diluted bitumen spill.

The reference question concerns provincial autonomy, particularly the rights of British Columbia to regulate the environmental and economic impacts of heavy oils, like diluted bitumen, transported through the province. It was filed today in the B.C. Court of Appeal.

"We have asked the courts to confirm B.C.'s powers within our jurisdiction to defend B.C.'s interests, so that there is clarity for today and for the generations to come," said Premier John Horgan. "Our government will continue to stand up for the right to protect B.C.'s environment, economy and coast."

On March 12, 2018, the government announced it had retained expert legal counsel to prepare and present a reference case related to B.C.'s right to protect the province's land, coast and waters.

For its reference, the B.C. government is asking the court to review proposed amendments to the Environmental Management Act that would give the Province authority to regulate impacts of heavy oils, like diluted bitumen, which, when released into the environment, would endanger human health, the environment and communities.

"We have been clear from the outset that the appropriate way to resolve disagreements over jurisdiction is through the courts, not through threats or unlawful measures to target citizens of another province," said David Eby, Attorney General. "This reference question seeks to confirm the scope and extent of provincial powers to regulate environmental and economic risks related to heavy oils like diluted bitumen."

The Province has been engaged with Indigenous groups, industry, environmental organizations and local governments to improve spill response in British Columbia.

"Our government is working to protect our economy, environment and communities by making sure we have effective spills prevention, response and recovery in place," said George Heyman, Minister of Environment and Climate Change Strategy. "A single spill of diluted bitumen would put at risk tens of thousands of jobs across B.C. We have a responsibility to ensure that every measure to reduce risks is in place, and that those responsible for spills are held accountable for fixing any environmental damage they cause."

In January 2018, B.C. proposed a second phase of regulations to improve preparedness,

response and recovery from potential spills. The regulations would apply to pipelines transporting any quantity of liquid petroleum products, as well as rail or truck operations transporting more than 10,000 litres of liquid petroleum products.

The proposed regulations would ensure geographically appropriate response plans, improve response times, ensure compensation for loss of public use of land and maximize the application of regulations to marine transport.

This work builds on the first phase of new spill regulations, approved in October 2017, under the Environmental Management Act, which established a standard of preparedness, response and recovery necessary to protect B.C.'s environment.

Quick Facts:

- A legal reference is an advisory opinion on a point of law. The B.C. Court of Appeal is the highest court to which the Province can send a reference question.
- British Columbia's reference seeks to clarify provincial jurisdiction with regard to regulating the potential impacts of heavy oils, like bitumen, that would endanger human health, the environment and communities.
- B.C. has had two recent references: One regarding the constitutionality of polygamy, and one related to third-party advertising in elections.

Learn More:

Constitution Question Act: <https://bit.ly/2Hh9yoE>

British Columbia Court of Appeal: http://www.courts.gov.bc.ca/Court_of_Appeal/

Three backgrounders follow.

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BACKGROUND 1

For Immediate Release
2018PREM0019-000742
April 26, 2018

Office of the Premier
Ministry of Attorney General
Ministry of Environment and Climate Change Strategy

Order-in-council and Reference Question

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that the questions set out below be referred to the British Columbia Court of Appeal for hearing and consideration under the *Constitutional Question Act*:

- 1 Is it within the legislative authority of the Legislature of British Columbia to enact legislation substantially in the form set out in the attached Appendix?
- 2 If the answer to question 1 is yes, would the attached legislation be applicable to hazardous substances brought into British Columbia by means of interprovincial undertakings?
- 3 If the answers to questions 1 and 2 are yes, would existing federal legislation render all or part of the attached legislation inoperative?

APPENDIX

Environmental Management Act

1 The following Part is added to the *Environmental Management Act*, S.B.C. 2003, c. 53:

PART 2.1 – HAZARDOUS SUBSTANCE PERMITS

Purposes

22.1 The purposes of this Part are

- (a) to protect, from the adverse effects of releases of hazardous substances,
 - (i) British Columbia's environment, including the terrestrial, freshwater, marine and atmospheric environment,
 - (ii) human health and well-being in British Columbia, and
 - (iii) the economic, social and cultural vitality of communities in British Columbia, and
- (b) to implement the polluter pays principle.

Interpretation

22.2 The definition of "permit" in section 1 (1) does not apply to this Part.

Requirement for hazardous substance permits

22.3 (1) In the course of operating an industry, trade or business, a person must not, during a calendar year, have possession, charge or control of a substance listed in Column 1 of the Schedule, and defined in Column 2 of the Schedule, in a total amount equal to or greater than

the minimum amount set out in Column 3 of the Schedule unless a director has issued a hazardous substance permit to the person to do so.

(2) Subsection (1) does not apply to a person who has possession, charge or control of a substance on a ship.

Issuance of hazardous substance permits

22.4 (1) Subject to subsection (2), on application by a person, a director may issue to the applicant a hazardous substance permit referred to in section 22.3 (1).

(2) Before issuing the hazardous substance permit, the director may require the applicant to do one or more of the following:

(a) provide information documenting, to the satisfaction of the director,

(i) the risks to human health or the environment that are posed by a release of the substance, and

(ii) the types of impacts that may be caused by a release of the substance and an estimate of the monetary value of those impacts;

(b) demonstrate to the satisfaction of the director that the applicant

(i) has appropriate measures in place to prevent a release of the substance,

(ii) has appropriate measures in place to ensure that any release of the substance can be minimized in gravity and magnitude, through early detection and early response, and

(iii) has sufficient capacity, including dedicated equipment and personnel, to be able to respond effectively to a release of the substance in the manner and within the time specified by the director;

(c) post security to the satisfaction of the director, or demonstrate to the satisfaction of the director that the applicant has access to financial resources including insurance, in order to ensure that the applicant has the capacity

(i) to respond to or mitigate any adverse environmental or health effects resulting from a release of the substance, and

(ii) to provide compensation that may be required by a condition attached to the permit under section 22.5 (b) (ii);

(d) establish a fund for, or make payments to, a local government or a first nation government in order to ensure that the local government or the first nation government has the capacity to respond to a release of the substance;

(e) agree to compensate any person, the government, a local government or a First Nations government for damages resulting from a release of the substance, including damages for any costs incurred in responding to the release, any costs related to ecological recovery and restoration, any economic loss and any loss of non-use value.

Conditions attached to hazardous substance permits

22.5 A director may, at any time, attach one or more of the following conditions to a hazardous substance permit:

(a) conditions respecting the protection of human health or the environment, including conditions requiring the holder of the permit

(i) to implement and maintain appropriate measures to prevent a release of the substance,

(ii) to implement and maintain appropriate measures to ensure that any release of the substance can be minimized in gravity and magnitude, through early detection and early response, and

(iii) to maintain sufficient capacity, including dedicated equipment and personnel, to be able to

respond effectively to a release of the substance in the manner and within the time specified by the director;

(b) conditions respecting the impacts of a release of the substance, including conditions requiring the holder of the permit

(i) to respond to a release of a substance in the manner and within the time specified by the director, and

(ii) to compensate, without proof of fault or negligence, any person, the government, a local government or a First Nations government for damages referred to in section 22.4 (2) (e).

Suspension or cancellation of hazardous substance permits

22.6 (1) Subject to this section, a director, by notice served on the holder of a hazardous substance permit, may suspend the permit for any period or cancel the permit.

(2) A notice served under subsection (1) must state the time at which the suspension or cancellation takes effect.

(3) A director may exercise the authority under subsection (1) if a holder of a hazardous substance permit fails to comply with the conditions attached to the permit.

Restraining orders

22.7 (1) If a person, by carrying on an activity or operation, contravenes section 22.3 (1), the activity or operation may be restrained in a proceeding brought by the minister in the Supreme Court.

(2) The making of an order by the court under subsection (1) in relation to a matter does not interfere with the imposition of a penalty in respect of an offence in relation to the same contravention.

Offence and penalty

22.8 A person who contravenes section 22.3 (1) commits an offence and is liable on conviction to a fine not exceeding \$400 000 or imprisonment for not more than 6 months, or both.

Power to amend Schedule

22.9 The Lieutenant Governor in Council may, by regulation, add substances, their definitions and their minimum amounts to the Schedule and delete substances, their definitions and their minimum amounts from the Schedule.

2 The following Schedule is added:

SCHEDULE [section 22.3 (1)]

Substance: Heavy Oil

Definition of Substance:

a) a crude petroleum product that has an American Petroleum Institute gravity of 22 or less, or
(b) a crude petroleum product blend containing at least one component that constitutes 30% or more of the volume of the blend and that has either or both of the following:

(i) an American Petroleum Institute gravity of 10 or less,

(ii) a dynamic viscosity at reservoir conditions of at least 10 000 centipoise.

Minimum Amount of Substance:

The largest annual amount of the annual amounts of the substance that the person had possession, charge or control of during each of 2013 to 2017.

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BACKGROUND 2

For Immediate Release
2018PREM0019-000742
April 26, 2018

Office of the Premier
Ministry of Attorney General
Ministry of Environment and Climate Change Strategy

What is a legal reference?

A reference is a process where government can refer a legal question or questions to a court for determination. The answer of the court in a reference process is treated as a decision of that court.

The Government of British Columbia can refer any matter to the Court of Appeal or to the B.C. Supreme Court under the Constitutional Question Act. The question is approved by cabinet, and set out in an order-in-council, which will be available on the B.C. Laws website.

If a matter is referred to the B.C. Supreme Court, the decision can be appealed to the Court of Appeal. References heard by the Court of Appeal avoid the delay and expense of going through two levels of court.

After a reference is filed, notice must be given to the Attorney General of Canada.

In addition, the court may direct other interested parties be notified of the hearing. These interested parties are entitled to be heard. The court will set a date for hearing the reference question.

After the hearing date, the B.C. Court of Appeal will deliberate, then release its decision. The court will determine when it releases its decision, which is treated as a decision of that court, and can be appealed.

Proposed legislation referred to a court for its advice may not necessarily be enacted. To be validly binding, the proposed legislation would need to go through the ordinary process, including being passed by the British Columbia legislature.

What is British Columbia's reference?

British Columbia's reference to the B.C. Court of Appeal is about the relationship between the Province's authority (jurisdiction) to prevent and manage releases into the environment of substances, like diluted bitumen, that would endanger human health, the environment or communities and the federal government's authority (jurisdiction) over federal undertakings, such as interprovincial pipelines or railways.

The courts have repeatedly affirmed that provinces may make laws and regulations within their legal authority, even in areas of shared authority that overlap with areas federal responsibility. In the 2016 case of *Coastal First Nations v. British Columbia*, the B.C. Supreme Court affirmed the ability of provinces to regulate impacts of projects, even if they are federal undertakings, writing:

"To disallow any provincial regulation over the project because it engages a federal undertaking would significantly limit the province's ability to protect social, cultural and economic interests in its lands and waters. It would go against the current trend in the jurisprudence favouring, where possible, co-operative federalism."

For its reference, the B.C. government is asking the B.C. Court of Appeal to review proposed amendments to the Environmental Management Act. The amendments would give the Province authority to regulate impacts of heavy oils like bitumen whose release into the environment would endanger human health, the environment or communities.

Specifically, these amendments would require that a person in possession of such substances, above certain minimum levels, would need to obtain a permit from the provincial director of waste management. Under the proposed amendments, the director could impose certain conditions on the permits.

In considering these proposed amendments, the Province asks the court to answer three questions that raise specific constitutional jurisdictional doctrines of "validity", "interjurisdictional immunity", and "paramountcy":

- Is the draft legislation within provincial jurisdiction to enact? (Validity)
- Would the draft legislation be applicable to hazardous substances brought into British Columbia by means of an interprovincial undertaking? (Interjurisdictional immunity)
- Is there any federal legislation that is inconsistent with the proposed amendments that would render the proposed amendments inoperative? (Paramountcy)

Contacts:

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BACKGROUNDER 3

For Immediate Release
2018PREM0019-000742
April 26, 2018

Office of the Premier
Ministry of Attorney General
Ministry of Environment and Climate Change Strategy

Protecting British Columbia's lands, water courses and coast

The provincial government is working to ensure the best possible protections are in place to defend B.C. lands, waters and coast, and the tens of thousands of jobs that rely on B.C.'s clean environment.

B.C. has over 19,000 tourism businesses, employing 133,000 people, throughout the province. Fisheries and seafood contribute more than \$660 million each year to the province's gross domestic product, employ 14,000 people and pay nearly \$400 million in wages. B.C.'s film industry supports more than 60,000 direct and indirect jobs.

The provincial government has been working to improve spill response throughout British Columbia. Legislation to establish new requirements to prevent, respond to and recover from spills was passed in 2016. The first set of new regulations to enable this legislation was passed in October 2017.

These regulations, developed with input from industry, Indigenous groups and local communities, as well as other federal and provincial agencies, apply to anyone transporting liquid petroleum products by pipeline, and anyone transporting more than 10,000 litres by rail or truck. The regulations contain provisions that:

- Require the development and implementation of spill contingency plans.
- Define requirements for drills and exercises.
- Mandate record-keeping for spill preparedness and response.
- Require enhanced reporting, and set additional cost-recovery mechanisms.
- Enable government to require plans for recovery in the event of a spill.

In February 2018, public consultations began on a second phase of proposed regulations, pursuant to the Environmental Management Act, to improve overall spill readiness. These include:

- Response times to ensure timely responses following a spill.
- Geographic response plans to ensure resources are available to support an immediate response, which consider the unique characteristics of a given sensitive area.
- Compensation for loss of public use from spills, including economic, cultural and recreational impacts.
- Maximizing application of regulations to marine spills.

The initial public engagement on proposed Phase 2 regulations will close April 30, 2018. Based on the results of this engagement, along with direct engagement with Indigenous groups, industry, environmental organizations and local governments, an intentions paper, outlining

what final regulations might look like, will be posted for public comment later in 2018. Final regulations are expected to be in place in early 2019.

The Province will also create an independent scientific advisory panel to help address the scientific uncertainties around the behavior of bitumen when spilled in water, outlined in the report, *The Royal Society of Canada Expert Panel: The Behaviour and Environmental Impacts of Crude Oil Released into Aqueous Environments*.

British Columbia continues to work with the federal government to further enhance marine and terrestrial spill prevention, response and recovery measures.

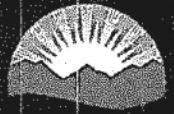
Contacts:

Jen Holmwood
Deputy Communications Director
Office of the Premier
250 818-4881

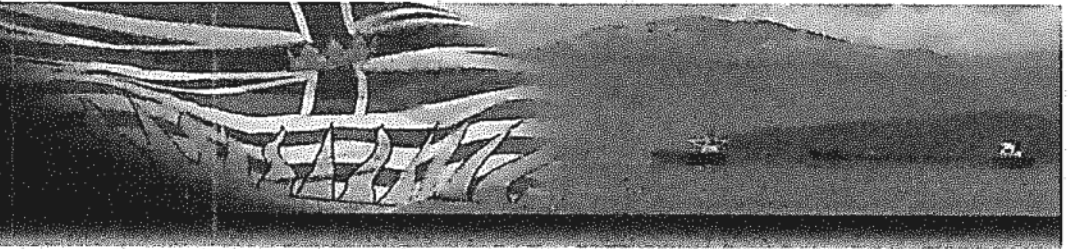
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BRITISH
COLUMBIA



Reference Question

1



BRITISH
COLUMBIA

The Reference Process

- The Province has the ability by Order in Council to refer “any matter” to the BC Court of Appeal or to the BC Supreme Court to ask for the court’s opinion.
- Historically such references have concerned questions of the constitutionality of legislation.
- Once a matter is referred to the BC Court of Appeal or BC Supreme Court, the Court must give to the Lieutenant Governor in Council its opinion on the matter.

- Government will seek the Court's guidance on the process to be followed for the hearing of the Reference including:
 - how interested parties will be identified and notified;
 - the timing of the exchange of written arguments; and
 - timing of the hearing.

Reference Process - Next Steps





BRITISH
COLUMBIA

The General Issue for the Court on the Reference ?

- The issue for the court concerns a division of powers question between:
 - the provincial government's jurisdiction to legislate in relation to "property and civil rights" (s.92(13), *Constitution Act, 1867*) and the federal government's jurisdiction to legislate in relation to "interprovincial undertakings" (s.92(10(a))).
 - The Province, using its powers under s. 92(13) proposes to amend the *Environmental Management Act*.



BRITISH
COLUMBIA

The Court will be asked 3 Questions

- **Question 1:** *Is the draft legislation within provincial jurisdiction to enact?*
- **Question 2:** *Would the draft legislation be applicable to hazardous substances brought into BC by means of an interprovincial undertaking?*
- **Question 3:** *Is there inconsistent federal legislation that would render the draft legislation inoperative?*



BRITISH
COLUMBIA

Proposed EMA Amendments

- Creates a new permitting regime under the *Environmental Management Act* (EMA).
- Includes requirements for enhanced spill prevention, planning, response and compensation by permittees.
- Applies only to those with care and control of heavy oil (bitumen).
- Applies only to increased volumes (over a 2013 to 2017 baseline).
- Sets out penalties for non-compliance.



BRITISH
COLUMBIA

Proposed EMA Amendments

- Elements of the proposed permitting regime:
 - Permits only required for incremental volumes
 - Applies to those possessing high-volumes of heavy oils based on current science on spill risks
 - Consistent with how we regulate other activities under the *Environmental Management Act*
 - Complimentary to provincial and federal environmental assessment processes
 - Engagement to precede implementation



BRITISH
COLUMBIA

Ongoing Spill Regulation Improvements

- Improvements to spills regulation under *Environmental Management Act* have been underway for several years.
- 2016 *Environmental Management Act* (EMA) amendments.
- 2017 Phase 1 Spills Regulations.
- 2018 – Engagement launched on Phase 2 spills regulations.
- New Phase 2 regulations expected in early 2019.



BRITISH
COLUMBIA



Reference Question

9

From: Crebo, David GCPE:EX
To: Frampton, Caelie ENV:EX; Kristianson, Eric GCPE:EX
Subject: Fwd: Oil volume data
Date: Thursday, April 26, 2018 12:09:25 PM

FYI - also sent this to Baldrey.

Dave Crebo
Communications Director
Ministry of Environment and Climate Change Strategy.
s.17 (cell)

Begin forwarded message:

From: "Crebo, David GCPE:EX" <David.Crebo@gov.bc.ca>
Date: April 26, 2018 at 12:08:13 PM PDT
To: "vpalmer@postmedia.com" <vpalmer@postmedia.com>
Subject: Oil volume data

Hi Vaughan - following up on your request with MZ. Below are estimates. Pls know these numbers are not sourced through ENV. These are cobbled together from sources external to govt, but give you an idea of the various volumes.

Cheers,
Dave

Dave Crebo
Communications Director
Ministry of Environment and Climate Change Strategy.
s.17 (cell)

how much bitumen moves through the province now by pipeline and rail		Currently, Trans Mountain has capacity to transport approximately 300,000 barrels of oil via Trans Mountain. Estimates provided to the province are that 20% of this capacity is used to transport diluted bitumen.
what % it represents of all petroleum products moving		

through.		
what share moves to the U.S. Border on the TMP spur		54% of crude oil in the existing pipeline goes to Puget Sound System. This can be dilbit and more conventional crudes.
how much is projected to move through the TMX.		TMX would increase the capacity of the Trans Mountain system from approximately 300,000 barrels per day to 890,000 barrels per day. Not all of the 890,000 would be diluted bitumen. However, the expansion would result in additional capacity of 590,000 barrels, the vast majority of which would be heavy oils, meaning diluted bitumen.
breakdowns of how much moves by the national railways and/or other pipelines and trucks.		Very rough estimate of bitumen by rail 2018: 730,230,680L

From: Singh, Jasmyn HLTH:EX
To: Kristianson, Eric GCPE:EX
Cc: Lloyd, Evan GCPE:EX
Subject: RE: KM
Date: Sunday, April 22, 2018 4:06:54 PM

Thanks everyone

-----Original Message-----

From: Kristianson, Eric GCPE:EX
Sent: Sunday, April 22, 2018 4:05 PM
To: Singh, Jasmyn HLTH:EX
Cc: Lloyd, Evan GCPE:EX
Subject: Re: KM

We'll get it sorted. Thanks Jas

Eric Kristianson
ADM Strategic Issues
GCPE
778-584-1248

> On Apr 22, 2018, at 3:19 PM, Singh, Jasmyn HLTH:EX <Jasmyn.Singh@gov.bc.ca> wrote:

>

> Hey there. Spoke with Adrian re: your ask that he be available for French language media on km. He is asking for translated materials so he can speak fluently - there are certain "terms of art" that have a specific translation in French

>

>

> Sent from my iPhone

CONFIDENTIAL DRAFT
Wednesday, April 25, 2018
Reference Case Filing Critical Path (April 17–30, 2018)

Timing	Event	Notes
April 13–14	Public opinion research	Status: Completed
Ongoing	Liaise with Federal government	Lead: PO Status: Ongoing
April 17–onwards	Media monitoring	Status: Ongoing
April 17 –24	Draft and develop initial collaterals materials	<p>Message frame (Danielle Dalzell) Key messages Government/ stakeholders (Tim Howlett) News release (Shawn Robins/Danielle Dalzell) *Robb Gibbs to review* Backgrounders</p> <ul style="list-style-type: none"> • Reference Question process (Shawn Robins) • Protecting the Coast (Dave Crebo) <p>Q&As (Tim Howlett) Speaking notes (PJH Danielle Dalzell, MDE Shawn Robins, MGH, Dave Crebo) Presentation deck for technical briefing (GCPE AG comms & GCPE Env Comms (GCPE HQ to synthesize) National media list (Danielle Dalzell/George Smith) Digital plan (Karl Hardin) Event Plan (Rick Devereux) Lead: GCPE HQ, AG GCPE Comms & Env Comms Status: Underway</p>
April 17 – 25, with additional updates post filing of reference as required	Stakeholder engagement matrix	<p>Identify key stakeholders (Legal, ENGO, FN, Business, other levels of government) Lead: GCPE HQ with PO Mira Oreck Status: Underway</p>
April 18	Statement from BC government regarding the timing of the filing of reference case in Court of Appeal	<p>Issue statement, followed by media avail Lead: MDE and MGH Status: Completed</p>
April 23–24	Initial Stakeholder outreach	<p>Provide initial overview, current status and interest in serving as a public validator Lead: GCPE HQ with PO Mira Oreck Status: Underway</p>

April 25	Briefing of Government Caucus	Lead: MDE & MGH Status: Completed
April 24	Finalize draft of collateral materials	Lead: GCPE HQ, AG GCPE Comms and PO Status: Completed
April 25	Briefing of Green Caucus	Time: Noon Lead: CASA (AGDE, MGH, Geoff Meggs) Status: Completed
April 25	Letter from MDE to all AGs in Canada, (federal, provincial and territorial) regarding pending filing of reference case	Time: Noon Lead: AG Status: Planning stages
April 25	Issue media advisory	Time: TBC (post Cabinet – p.m.) Lead: PO Status: Completed
April 25	PJH calls Premier of Quebec	Time: TBC Lead: PO Status: TBC
April 25	Technical Dry Run with AG legal staff & MOE DM	Time: Post 6:00 p.m. TBC Lead: GCPE HQ Status: Completed
April 25–26	Activation of stakeholder outreach	Lead: GCPE HQ & PO Mira Oreck Status: TBC
April 26	Filing of reference	Lead: Legal counsel Status: TBC
April 26	Technical presentation to press gallery with AG legal staff & MOE DM	Technical briefing on background for Victoria Press Gallery & potentially Vancouver and community media at VCO in budget lock-up format (45 min) Victoria and Vancouver media would have the opportunity to ask questions. Briefing would include PowerPoint, which would be web posted following news conference Location: Legislative press theatre & VCO, by dial-in Time: 8:30 a.m. Lead: GCPE HQ Status: TBC
April 26	News conference	Time: TBD

		Location: Legislative Press Theatre Lead: PJH, MDE & MGH, supported by GCPE HQ, AG GCPE Comms & Env GCPE Comms Status: Planning underway
April 26	Post new conference media avail, including media French speaking media	Follow up media as required Lead: MDE, MGH as well as MAD for French speaking media Status: TBD
April 26	Post news conference debrief & planning of next steps and sustainment	Lead: GCPE HQ Status: TBD
April 26—onwards	Plan sustainment strategy	Lead: GCPE HQ Status: TBD

NEWS RELEASE

For Immediate Release
2018PREM0019-000742
April 26, 2018

Office of the Premier
Ministry of Attorney General
Ministry of Environment and Climate Change Strategy

Province submits court reference to protect B.C.'s coast

VICTORIA – The Government of British Columbia has submitted a reference question to the B.C. Court of Appeal today to affirm its right to protect B.C. from the threat of a diluted bitumen spill.

The reference question concerns provincial autonomy, particularly the rights of British Columbia to regulate the environmental and economic impacts of heavy oils, like diluted bitumen, transported through the province. It was filed today in the B.C. Court of Appeal.

“We have asked the courts to confirm B.C.’s powers within our jurisdiction to defend B.C.’s interests, so that there is clarity for today and for the generations to come,” said Premier John Horgan. “Our government will continue to stand up for the right to protect B.C.’s environment, economy and coast.”

On March 12, 2018, the government announced it had retained expert legal counsel to prepare and present a reference case related to B.C.’s right to protect the province’s land, coast and waters.

For its reference, the B.C. government is asking the court to review proposed amendments to the Environmental Management Act that would give the Province authority to regulate impacts of heavy oils, like diluted bitumen, which, when released into the environment, would endanger human health, the environment and communities.

“We have been clear from the outset that the appropriate way to resolve disagreements over jurisdiction is through the courts, not through threats or unlawful measures to target citizens of another province,” said David Eby, Attorney General. “This reference question seeks to confirm the scope and extent of provincial powers to regulate environmental and economic risks related to heavy oils like diluted bitumen.”

The Province has been engaged with Indigenous groups, industry, environmental organizations and local governments to improve spill response in British Columbia.

“Our government is working to protect our economy, environment and communities by making sure we have effective spills prevention, response and recovery in place,” said George Heyman, Minister of Environment and Climate Change Strategy. “A single spill of diluted bitumen would put at risk tens of thousands of jobs across B.C. We have a responsibility to ensure that every measure to reduce risks is in place, and that those responsible for spills are held accountable for fixing any environmental damage they cause.”

In January 2018, B.C. proposed a second phase of regulations to improve preparedness,

response and recovery from potential spills. The regulations would apply to pipelines transporting any quantity of liquid petroleum products, as well as rail or truck operations transporting more than 10,000 litres of liquid petroleum products.

The proposed regulations would ensure geographically appropriate response plans, improve response times, ensure compensation for loss of public use of land and maximize the application of regulations to marine transport.

This work builds on the first phase of new spill regulations, approved in October 2017, under the Environmental Management Act, which established a standard of preparedness, response and recovery necessary to protect B.C.'s environment.

Quick Facts:

- A legal reference is an advisory opinion on a point of law. The B.C. Court of Appeal is the highest court to which the Province can send a reference question.
- British Columbia's reference seeks to clarify provincial jurisdiction with regard to regulating the potential impacts of heavy oils, like bitumen, that would endanger human health, the environment and communities.
- B.C. has had two recent references: One regarding the constitutionality of polygamy, and one related to third-party advertising in elections.

Learn More:

Constitution Question Act: <https://bit.ly/2Hh9yoE>

British Columbia Court of Appeal: http://www.courts.gov.bc.ca/Court_of_Appeal/

Three backgrounders follow.

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BACKGROUND 1

For Immediate Release
2018PREM0019-000742
April 26, 2018

Office of the Premier
Ministry of Attorney General
Ministry of Environment and Climate Change Strategy

Order-in-council and Reference Question

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that the questions set out below be referred to the British Columbia Court of Appeal for hearing and consideration under the *Constitutional Question Act*:

- 1 Is it within the legislative authority of the Legislature of British Columbia to enact legislation substantially in the form set out in the attached Appendix?
- 2 If the answer to question 1 is yes, would the attached legislation be applicable to hazardous substances brought into British Columbia by means of interprovincial undertakings?
- 3 If the answers to questions 1 and 2 are yes, would existing federal legislation render all or part of the attached legislation inoperative?

APPENDIX

Environmental Management Act

1 The following Part is added to the Environmental Management Act, S.B.C. 2003, c. 53:

PART 2.1 – HAZARDOUS SUBSTANCE PERMITS

Purposes

22.1 The purposes of this Part are

- (a) to protect, from the adverse effects of releases of hazardous substances,
 - (i) British Columbia's environment, including the terrestrial, freshwater, marine and atmospheric environment,
 - (ii) human health and well-being in British Columbia, and
 - (iii) the economic, social and cultural vitality of communities in British Columbia, and
- (b) to implement the polluter pays principle.

Interpretation

22.2 The definition of "permit" in section 1 (1) does not apply to this Part.

Requirement for hazardous substance permits

22.3 (1) In the course of operating an industry, trade or business, a person must not, during a calendar year, have possession, charge or control of a substance listed in Column 1 of the Schedule, and defined in Column 2 of the Schedule, in a total amount equal to or greater than

the minimum amount set out in Column 3 of the Schedule unless a director has issued a hazardous substance permit to the person to do so.

(2) Subsection (1) does not apply to a person who has possession, charge or control of a substance on a ship.

Issuance of hazardous substance permits

22.4 (1) Subject to subsection (2), on application by a person, a director may issue to the applicant a hazardous substance permit referred to in section 22.3 (1).

(2) Before issuing the hazardous substance permit, the director may require the applicant to do one or more of the following:

(a) provide information documenting, to the satisfaction of the director,

(i) the risks to human health or the environment that are posed by a release of the substance, and

(ii) the types of impacts that may be caused by a release of the substance and an estimate of the monetary value of those impacts;

(b) demonstrate to the satisfaction of the director that the applicant

(i) has appropriate measures in place to prevent a release of the substance,

(ii) has appropriate measures in place to ensure that any release of the substance can be minimized in gravity and magnitude, through early detection and early response, and

(iii) has sufficient capacity, including dedicated equipment and personnel, to be able to respond effectively to a release of the substance in the manner and within the time specified by the director;

(c) post security to the satisfaction of the director, or demonstrate to the satisfaction of the director that the applicant has access to financial resources including insurance, in order to ensure that the applicant has the capacity

(i) to respond to or mitigate any adverse environmental or health effects resulting from a release of the substance, and

(ii) to provide compensation that may be required by a condition attached to the permit under section 22.5 (b) (ii);

(d) establish a fund for, or make payments to, a local government or a first nation government in order to ensure that the local government or the first nation government has the capacity to respond to a release of the substance;

(e) agree to compensate any person, the government, a local government or a First Nations government for damages resulting from a release of the substance, including damages for any costs incurred in responding to the release, any costs related to ecological recovery and restoration, any economic loss and any loss of non-use value.

Conditions attached to hazardous substance permits

22.5 A director may, at any time, attach one or more of the following conditions to a hazardous substance permit:

(a) conditions respecting the protection of human health or the environment, including conditions requiring the holder of the permit

(i) to implement and maintain appropriate measures to prevent a release of the substance,

(ii) to implement and maintain appropriate measures to ensure that any release of the substance can be minimized in gravity and magnitude, through early detection and early response, and

(iii) to maintain sufficient capacity, including dedicated equipment and personnel, to be able to

respond effectively to a release of the substance in the manner and within the time specified by the director;

(b) conditions respecting the impacts of a release of the substance, including conditions requiring the holder of the permit

(i) to respond to a release of a substance in the manner and within the time specified by the director, and

(ii) to compensate, without proof of fault or negligence, any person, the government, a local government or a First Nations government for damages referred to in section 22.4 (2) (e).

Suspension or cancellation of hazardous substance permits

22.6 (1) Subject to this section, a director, by notice served on the holder of a hazardous substance permit, may suspend the permit for any period or cancel the permit.

(2) A notice served under subsection (1) must state the time at which the suspension or cancellation takes effect.

(3) A director may exercise the authority under subsection (1) if a holder of a hazardous substance permit fails to comply with the conditions attached to the permit.

Restraining orders

22.7 (1) If a person, by carrying on an activity or operation, contravenes section 22.3 (1), the activity or operation may be restrained in a proceeding brought by the minister in the Supreme Court.

(2) The making of an order by the court under subsection (1) in relation to a matter does not interfere with the imposition of a penalty in respect of an offence in relation to the same contravention.

Offence and penalty

22.8 A person who contravenes section 22.3 (1) commits an offence and is liable on conviction to a fine not exceeding \$400 000 or imprisonment for not more than 6 months, or both.

Power to amend Schedule

22.9 The Lieutenant Governor in Council may, by regulation, add substances, their definitions and their minimum amounts to the Schedule and delete substances, their definitions and their minimum amounts from the Schedule.

2 The following Schedule is added:

SCHEDULE [section 22.3 (1)]

Substance: Heavy Oil

Definition of Substance:

a) a crude petroleum product that has an American Petroleum Institute gravity of 22 or less, or
(b) a crude petroleum product blend containing at least one component that constitutes 30% or more of the volume of the blend and that has either or both of the following:

(i) an American Petroleum Institute gravity of 10 or less,

(ii) a dynamic viscosity at reservoir conditions of at least 10 000 centipoise.

Minimum Amount of Substance:

The largest annual amount of the annual amounts of the substance that the person had possession, charge or control of during each of 2013 to 2017.

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BACKGROUND 2

For Immediate Release
2018PREM0019-000742
April 26, 2018

Office of the Premier
Ministry of Attorney General
Ministry of Environment and Climate Change Strategy

What is a legal reference?

A reference is a process where government can refer a legal question or questions to a court for determination. The answer of the court in a reference process is treated as a decision of that court.

The Government of British Columbia can refer any matter to the Court of Appeal or to the B.C. Supreme Court under the Constitutional Question Act. The question is approved by cabinet, and set out in an order-in-council, which will be available on the B.C. Laws website.

If a matter is referred to the B.C. Supreme Court, the decision can be appealed to the Court of Appeal. References heard by the Court of Appeal avoid the delay and expense of going through two levels of court.

After a reference is filed, notice must be given to the Attorney General of Canada.

In addition, the court may direct other interested parties be notified of the hearing. These interested parties are entitled to be heard. The court will set a date for hearing the reference question.

After the hearing date, the B.C. Court of Appeal will deliberate, then release its decision. The court will determine when it releases its decision, which is treated as a decision of that court, and can be appealed.

Proposed legislation referred to a court for its advice may not necessarily be enacted. To be validly binding, the proposed legislation would need to go through the ordinary process, including being passed by the British Columbia legislature.

What is British Columbia's reference?

British Columbia's reference to the B.C. Court of Appeal is about the relationship between the Province's authority (jurisdiction) to prevent and manage releases into the environment of substances, like diluted bitumen, that would endanger human health, the environment or communities and the federal government's authority (jurisdiction) over federal undertakings, such as interprovincial pipelines or railways.

The courts have repeatedly affirmed that provinces may make laws and regulations within their legal authority, even in areas of shared authority that overlap with areas federal responsibility. In the 2016 case of *Coastal First Nations v. British Columbia*, the B.C. Supreme Court affirmed the ability of provinces to regulate impacts of projects, even if they are federal undertakings, writing:

“To disallow any provincial regulation over the project because it engages a federal undertaking would significantly limit the province’s ability to protect social, cultural and economic interests in its lands and waters. It would go against the current trend in the jurisprudence favouring, where possible, co-operative federalism.”

For its reference, the B.C. government is asking the B.C. Court of Appeal to review proposed amendments to the Environmental Management Act. The amendments would give the Province authority to regulate impacts of heavy oils like bitumen whose release into the environment would endanger human health, the environment or communities.

Specifically, these amendments would require that a person in possession of such substances, above certain minimum levels, would need to obtain a permit from the provincial director of waste management. Under the proposed amendments, the director could impose certain conditions on the permits.

In considering these proposed amendments, the Province asks the court to answer three questions that raise specific constitutional jurisdictional doctrines of “validity”, “interjurisdictional immunity”, and “paramountcy”:

- Is the draft legislation within provincial jurisdiction to enact? (Validity)
- Would the draft legislation be applicable to hazardous substances brought into British Columbia by means of an interprovincial undertaking? (Interjurisdictional immunity)
- Is there any federal legislation that is inconsistent with the proposed amendments that would render the proposed amendments inoperative? (Paramountcy)

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BACKGROUNDER 3

For Immediate Release
2018PREM0019-000742
April 26, 2018

Office of the Premier
Ministry of Attorney General
Ministry of Environment and Climate Change Strategy

Protecting British Columbia's lands, water courses and coast

The provincial government is working to ensure the best possible protections are in place to defend B.C. lands, waters and coast, and the tens of thousands of jobs that rely on B.C.'s clean environment.

B.C. has over 19,000 tourism businesses, employing 133,000 people, throughout the province. Fisheries and seafood contribute more than \$660 million each year to the province's gross domestic product, employ 14,000 people and pay nearly \$400 million in wages. B.C.'s film industry supports more than 60,000 direct and indirect jobs.

The provincial government has been working to improve spill response throughout British Columbia. Legislation to establish new requirements to prevent, respond to and recover from spills was passed in 2016. The first set of new regulations to enable this legislation was passed in October 2017.

These regulations, developed with input from industry, Indigenous groups and local communities, as well as other federal and provincial agencies, apply to anyone transporting liquid petroleum products by pipeline, and anyone transporting more than 10,000 litres by rail or truck. The regulations contain provisions that:

- Require the development and implementation of spill contingency plans.
- Define requirements for drills and exercises.
- Mandate record-keeping for spill preparedness and response.
- Require enhanced reporting, and set additional cost-recovery mechanisms.
- Enable government to require plans for recovery in the event of a spill.

In February 2018, public consultations began on a second phase of proposed regulations, pursuant to the Environmental Management Act, to improve overall spill readiness. These include:

- Response times to ensure timely responses following a spill.
- Geographic response plans to ensure resources are available to support an immediate response, which consider the unique characteristics of a given sensitive area.
- Compensation for loss of public use from spills, including economic, cultural and recreational impacts.
- Maximizing application of regulations to marine spills.

The initial public engagement on proposed Phase 2 regulations will close April 30, 2018. Based on the results of this engagement, along with direct engagement with Indigenous groups, industry, environmental organizations and local governments, an intentions paper, outlining

what final regulations might look like, will be posted for public comment later in 2018. Final regulations are expected to be in place in early 2019.

The Province will also create an independent scientific advisory panel to help address the scientific uncertainties around the behavior of bitumen when spilled in water, outlined in the report, *The Royal Society of Canada Expert Panel: The Behaviour and Environmental Impacts of Crude Oil Released into Aqueous Environments*.

British Columbia continues to work with the federal government to further enhance marine and terrestrial spill prevention, response and recovery measures.

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Sherlock, Stephanie GCPE:EX

From: Dalzell, Danielle GCPE:EX
Sent: Wednesday, April 25, 2018 9:23 AM
To: Bianco, Catherine GCPE:EX
Cc: Robins, Shawn GCPE:EX; Devereux, Rick GCPE:EX; Sherlock, Stephanie GCPE:EX
Subject: RE: Materials for tomorrow morning

Hi Catherine,

Usually the lead Ministry (In this case you) would print materials for tomorrow. If you could do that for Victoria, that would be great.

I'm copying Rick and Stephanie on this. Their teams are going to handle the Vancouver technical briefing and call in, so they should be able to also print and distribute the materials there.

Jen Holmwood is apparently drafting the MA, I'll email her and copy you both.

Thank you,
Danielle

From: Bianco, Catherine GCPE:EX
Sent: Wednesday, April 25, 2018 9:18 AM
To: Dalzell, Danielle GCPE:EX
Cc: Robins, Shawn GCPE:EX
Subject: Materials for tomorrow morning

Hi Danielle -- Shawn asked who is to handle the printing of the materials for tomorrow morning and what quantities are needed for Vancouver and Victoria?

Also, who is doing the media alert?

Materials include:

- NR
- Two backgrounders
- Reference

Can you let us know your thoughts.

Thanks so much.

Catherine

Reference Question

Key Messages: Province submits court reference to protect B.C.'s coast

- The government of British Columbia submitted a reference question to the B.C. Court of Appeal to affirm its right to protect B.C.'s coast and inland waters from the threat of a diluted bitumen spill.
- We have asked the courts to confirm B.C.'s powers, within our jurisdiction, to defend B.C.'s interests so that there is clarity for today and for generations to come.
- Our government will continue to stand up for the right to protect B.C.'s environment, economy, and coast
- We put forward five proposals in January and four of those have gone to public consultation without any controversy. And we are seeking clarification from the court on the one that provoked controversy.
- We have been clear from the outset that the appropriate way to resolve disagreements over jurisdiction is through the courts, not through threats or unlawful measures to target citizens of another province.
- This reference question seeks to confirm the scope and extent of provincial powers to regulate environmental and economic risks related to the transportation of heavy oils like diluted bitumen across our province.

QAs

On the Reference Question...

s.13

Page 228 to/à Page 231

Withheld pursuant to/removed as

s.13

Technical details on reference cases...

How did government come to the decision that this is the right question and approach to put in front of the court?

- Government sought guidance from experts in constitutional law on how to best frame our request for clarity on B.C.'s right to protect human health, the environment and communities from a catastrophic heavy oil spill.
- We have now presented a reference to the B.C. Court of Appeal to affirm our rights to defend B.C.'s interests.
- The reference is set out in an Order in Council and will be available on B.C. Laws.

Why did you select the B.C. Court of Appeal?

- This reference is a question of law, which is well suited for the B.C. Court of Appeal.
- The B.C. Court of Appeal will help us secure certainty as quickly as possible.

How long will it take to get a hearing date?

- Government will seek the guidance of the Court to determine which interested parties are entitled to notice, times for exchange of arguments and when the matter will be heard.

Who may be part of the case?

- We have given notice to the Attorney General of Canada. The federal government can choose whether it will participate in the reference.
- The Court will determine who needs to be notified and how they can participate in the reference.
- It remains to be seen if other parties seek to participate.

How long will the hearing take?

- The length of the hearing will be determined by the Court and will depend on factors such as the number of interested parties who are granted status to participate.

How long will it take for the court to make a decision?

- After the court has heard all parties, the B.C. Court of Appeal will deliberate.
- We do not know how long it will take for a decision to be reached.

How many times has B.C. submitted reference questions to the courts?

- There have been two recent references – one was for the constitutionality of polygamy and one related to third-party advertising in elections.

Additional General QAs...

s.13

Page 234 to/à Page 235

Withheld pursuant to/removed as

s.13

DRAFT

April 26, 2018

Speaking Notes - Referral of Reference Question to B.C. Court of Appeal

Speech Goals:

- Announce that the government has filed a reference question with the B.C. court of appeal to confirm B.C.'s powers, within our jurisdiction, to defend B.C.'s interests.
- Affirm that our government will continue to stand up to protect B.C.'s environment, economy and coast for now, and for future generations.

Format:

- News Conference in Legislature Press Theatre
- Podium

Audience:

- Media, public

Participants:

- Minister David Eby
- Minister George Heyman

TALKING POINTS BEGIN NEXT PAGE

- Thank you for being here.
- First, I would like to acknowledge that we are on the territories of the Lekwungen speaking peoples, the Songhees and Esquimalt First Nations.
- As anticipated, today our government has submitted a reference question to the B.C. Court of Appeal.
- We committed in February that we would refer this matter to the courts.
- Our government retained external counsel to prepare the reference case.

- Today, that case has been filed to confirm B.C.'s powers, within our jurisdiction, to defend B.C.'s interests.
- And to protect B.C.'s environment, economy and coast.
- We hope that this ruling will provide clarity for today and for the generations to come.
- We're standing up for the right to protect B.C.
- And for the right of British Columbians to be heard.

- A single spill of diluted bitumen would threaten tens of thousands of jobs and billions of dollars of economic activity.
- We have a responsibility to ensure that the best possible protections are in place to protect our coast and environment.
- And, we assert the right, and the jurisdiction, to enforce regulations necessary to protect BC's environment and thousands of jobs a clean environment supports.

- This is about the people of British Columbia, and the First Nations who are saying we want to defend our coast, our economy and our way of life.
- Our government will continue to stand up for the people of this province for now, and for future generations.
- I'll now hand it over to Minister Eby to speak to the details of the reference question.



BRITISH
COLUMBIA

Reference Question

1



The Reference Process

- The Province has the ability by Order in Council to refer “any matter” to the BC Court of Appeal or to the BC Supreme Court to ask for the court’s opinion.
- Historically such references have concerned questions of the constitutionality of legislation.
- Once a matter is referred to the BC Court of Appeal or BC Supreme Court, the Court must give to the Lieutenant Governor in Council its opinion on the matter.



Reference Process - Next Steps

- Government will seek the Court's guidance on the process to be followed for the hearing of the Reference including:
 - how interested parties will be identified and notified;
 - the timing of the exchange of written arguments; and
 - timing of the hearing.



The General Issue for the Court on the Reference ?

- The issue for the court concerns a division of powers question between:
 - the provincial government's jurisdiction to legislate in relation to "property and civil rights" (s.92(13), *Constitution Act, 1867*) and the federal government's jurisdiction to legislate in relation to "interprovincial undertakings"(s.92(10(a))).
 - The Province, using its powers under s. 92(13) proposes to amend the *Environmental Management Act*.



The Court will be asked 3 Questions

- **Question 1:** *Is the draft legislation within provincial jurisdiction to enact?*
- **Question 2:** *Would the draft legislation be applicable to hazardous substances brought into BC by means of an interprovincial undertaking?*
- **Question 3:** *Is there inconsistent federal legislation that would render the draft legislation inoperative?*



Proposed EMA Amendments

- Creates a new permitting regime under the *Environmental Management Act* (EMA).
- Includes requirements for enhanced spill prevention, planning, response and compensation by permittees.
- Applies only to those with care and control of heavy oil (bitumen).
- Applies only to increased volumes (over a 2013 to 2017 baseline).
- Sets out penalties for non-compliance.



Proposed EMA Amendments

- Elements of the proposed permitting regime:
 - Permits only required for incremental volumes
 - Applies to those possessing high-volumes of heavy oils based on current science on spill risks
 - Consistent with how we regulate other activities under the *Environmental Management Act*
 - Complimentary to provincial and federal environmental assessment processes
 - Engagement to precede implementation



Ongoing Spill Regulation Improvements

- Improvements to spills regulation under *Environmental Management Act* have been underway for several years.
- 2016 *Environmental Management Act* (EMA) amendments.
- 2017 Phase 1 Spills Regulations.
- 2018 – Engagement launched on Phase 2 spills regulations.
- New Phase 2 regulations expected in early 2019.



BRITISH
COLUMBIA

Reference Question

Page 250 to/à Page 255

Withheld pursuant to/removed as

s.14

Summary

- Best possible protections - our environment and economy, and water
 - 10's thousands of jobs
 - Effective spills prevention response, and recovery
 - Accountability
- Phase 1 regs: pipelines (any quantity), rail/trucks carrying over 10,000 litres
- Phase 2 regs (Feb): GRPs, response times, compensation, marine application. Ends Monday.
- Science panel – safe transport, cleanup
 - Royal Society gap
- Close gaps particularly on bitumen behaviour in water and differing conditions
- Whether – how can clean up
- Discussion with feds
- Great concern w/ bitumen
 - Rivers, streams, coast
- Connection/passion of BC'ians
- Back to Eby

Questions?