



BRITISH
COLUMBIA



Reference Question



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.



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