S.C.C. No.: 33718

IN THE SUPREME COURT OF CANADA

IN THE MATTER OF Section 53 of the *Supreme Court Act*, R.S.C. 1985, c. S-26;

AND IN THE MATTER OF a Reference by the Governor in Council concerning the proposed Canadian *Securities Act*, as set out in Order in Council P.C. 2010-667, dated May 26, 2010

FACTUM OF THE INTERVENER, THE ATTORNEY GENERAL OF ONTARIO

(*Pursuant to Rule 42 of the Supreme Court of Canada Rules*)

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TABLE OF CONTENTS

PART I – OVERVIEW AND STATEMENT OF FACTS

1. The Attorney General of Ontario ["Ontario"] intervenes in the reference pursuant to s. 53(5) of the *Supreme Court Act* and the order of the Chief Justice of Canada made on June 14, 2010. Ontario submits that the reference question should be answered in the affirmative.

2. The proposed Canadian *Securities Act* ["the proposed Act"] is within the legislative authority of the Parliament of Canada to make laws in relation to "The Regulation of Trade and Commerce" pursuant to s. 91(2) of the *Constitution Act, 1867*. The proposed Act is authorized by the federal power "over general trade and commerce affecting Canada as a whole." All of the indicia identified by this Court in *General Motors v. City National Leasing* are satisfied here.

> ***General Motors v. City National Leasing*, [1989] 1 S.C.R. 641 at 662-663 [Canada Book of Authorities, Tab 13]**
>
> ***Kirkbi AG v. Ritvik Holdings Inc.*, [2005] 3 S.C.R. 302 at paras. 15-17 [Canada Book of Authorities, Tab 16]**

3. Ontario adopts the facts as set out in Canada's factum at paragraphs 10-43. In addition, Ontario relies on the facts as set out in this factum.

A. Effective capital markets regulation is of central importance to Ontario

4. The capital markets are of great importance to Ontario. Ontario residents hold approximately 42% of the financial assets held by individual Canadians. Ontario-based pension funds hold 52% of total assets held by Canadian employee pension funds. Listed issuers based in Ontario represent 42% of Canada's total equity market capitalization. 81% of total Canadian investment fund assets are held by companies based in Ontario.

> **Record of the Intervener, Attorney General of Ontario ["Record (Ontario)"], Vol. XXIV, Affidavit of Robert Christie sworn October 28, 2010 ["Christie"] at p. 8, paras. 16 and 18**

5. The financial services sector, of which the securities sector is a key component, is a strong contributor to the economy of Ontario. It generates substantial employment in

Ontario, both directly in terms of persons employed by financial services firms such as banks and brokerages, and through its demand for legal, accounting, information technology, and consulting services. 64% of Investment Industry Regulatory Organization of Canada ["IIROC"] dealer members have their headquarters in Ontario. About 58% of the output of the Canadian securities industry and 51% of the industry's employment are in Ontario (as of 2009). The financial services sector employs 365,000 people in Ontario, with 64,700 employed in securities (as of 2009). The financial services sector is Ontario's second-largest industry by output, after manufacturing, contributing 9.1% of Ontario's real GDP (in 2009). Between 2005 and 2009, real GDP growth in financial services was 16%.

Record (Ontario), Vol. XXIV, Christie at pp. 8-9, paras. 17 and 20-21

6. The importance of the financial services sector to Toronto is even more pronounced. Toronto is the third largest North American financial services centre, after New York and Chicago. Toronto is home to five of Canada's largest domestic banks, 55 foreign bank subsidiaries and branches, and 119 securities firms. Toronto is headquarters for six of Canada's top insurers that manage more than 90% of the industry's assets, 61 mutual fund companies, 58 pension fund managers, and five of Canada's largest pension plans with combined assets in excess of $300 billion. The financial services sector leads all other service-producing sectors by contributing 12% to Toronto's Gross Municipal Product.

Record (Ontario), Vol. XXIV, Christie at p. 10, para. 22

7. Given the concentration of derivative markets activity in Toronto, Ontario recently enacted legislation establishing a framework for the regulation of over-the-counter derivatives. The amount outstanding of Canadian over-the-counter derivatives is estimated at US$12.4 trillion, with the largest six Canadian banks (of which five have headquarters or executive offices in Toronto) accounting for US$12 trillion of this total. 80% of derivatives trades entered into by Canadian participants had at least one side of the transaction booked outside of Canada. Only five provinces regulate derivatives directly.

***Helping Ontario Families and Managing Responsibly Act, 2010,* S.O. 2010, c. 26, Sched. 18 [Ontario Book of Authorities, Tab 9]**

2010 Ontario Economic Outlook and Fiscal Review at 33-34 [Ontario Book of Authorities, Tab 10]

Record (Ontario), Vol. XXIV, Christie at p. 5, para. 10

8. The Toronto Stock Exchange ["TSX"] is Canada's senior equity market, providing domestic and international investors with access to the Canadian marketplace. The TSX is the eighth-largest equity market in the world, by market capitalization. Issuers list a variety of securities on the TSX, including conventional securities and equity-related products such as exchange-traded funds, income trusts and investment funds. A number of other Canadian exchanges and alternative trading systems also operate in Ontario, including the TSX Venture Exchange Inc., the Bourse de Montreal, the Natural Gas Exchange Inc., and a number of other specialized markets.

Record (Ontario), Vol. XXIV, Christie at pp. 8-9, para. 19

9. The Ontario Securities Commission ["OSC"] is Canada's largest securities regulator. The OSC regulates the broadest array and largest number of intermediaries, marketplaces and TSX-listed issuers in Canada. It also oversees a significant concentration of junior issuers.

Record (Ontario), Vol. XXIV, Christie at p. 10, para. 23

10. As a result of the foregoing, Ontario has a strong economic and financial interest in ensuring that the financial services and the securities industries remain as competitive and innovative as possible while providing efficient and effective regulation to protect investors and other capital markets participants.

Record (Ontario), Vol. XXIV, Christie at p. 9, para. 20

B. Today's capital markets are global in nature and highly integrated

11. Canadian capital markets activity can no longer be characterized as provincial or even national. Investors located in Ontario invest in companies with headquarters across the country and indeed the world, across all sectors of the economy. Today's capital markets are global in nature and are becoming increasingly interconnected. Foreign investors and issuers are playing a larger role in Canada's capital markets, while

Canadians are becoming more active in other nations' capital markets. Many examples illustrate the increasingly global nature of Canadian capital markets activity:

a. Foreign holdings of Canadian stocks and bonds increased 26% between 2005 and 2009 (to $608.5 billion);

b. Investments by Canadians in foreign bonds and stocks increased 36% between 2005 and 2009 (from $279.1 billion to $379.5 billion);

c. The number of international listings on Canadian exchanges increased from 150 (in October 2005) to 285 (in March 2010);

d. Foreign issuers represent approximately 8% of the 3,600 listed issuers in Canada;

e. 35% of the world's public oil and gas companies are listed on the TSX, as of March 2010.

Record (Ontario), Vol. XXIV, Christie at pp. 4-5, paras. 10-11

See also: Record of the Intervener, Canadian Bankers Association ["Record (CBA)"], Vol. XXVIII, Affidavit of Marion G. Wrobel sworn October 22, 2010, Exhibit 1 (Report of Canadian Bankers Association) ["Wrobel"] at pp. 13-14, paras. 16 and 18

Record of the Intervener, Canadian Foundation for Advancement of Invertor Rights ["Record (FAIR Canada)"], Vol. XXXII, Affidavit of Ermanno Pascutto sworn October 28, 2010 ["Pascutto"] at pp. 5-6, para. 13

Record of the Intervener, Investment Industry Association of Canada ["Record (IIAC)"], Vol. XXXI, Affidavit of Michael Miller sworn October 28, 2010 at p. 58, paras. 27-29

Record of the Attorney General of Canada ["Record (Canada)"], Vol. I, Report of Michael J. Trebilcock (National Securities Regulator), May 20, 2010 ["First Trebilcock Report"] at p. 247, para. 37

12. As a result of this growing global integration, capital markets disruptions in one country are transmitted almost instantaneously to the capital markets of others. The widespread packaging of U.S. based sub-prime mortgages as asset-backed securities (securitization) and their placement with institutions around the world is a recent example of the interconnected nature of global markets. The rapid and substantial decline in

market liquidity and the prices of these asset-backed securities and other classes of financial assets in 2007 and 2008 precipitated a severe and pervasive global economic recession. This international financial crisis highlighted both the degree of inter-connectedness of global markets and the sensitivity of the world's economies to capital markets developments. Global capital markets have demonstrated an increased tendency to act both as a source of shocks to the global economy and a transmission mechanism for those shocks.

Record (Ontario), Vol. XXIV, Christie at p. 6, para. 12

See also: Record (CBA), Vol. XXVIII, Wrobel at pp. 25-31, paras. 39-53

Record (Canada), Vol. I, First Trebilcock Report at pp. 240-241, paras. 26-27

13. The global capital markets have been undergoing dynamic innovation for at least the last forty years, with a proliferation of new products including derivatives and synthetic securities. The distinction between banking and securities products has become increasingly blurred as a result of new product innovation. This innovation has promoted global market integration and interdependency and as a result, by extension, has also increased the risk of systemic failure.

Record (Ontario), Vol. XXIV, Christie at p. 6, para. 13

14. A key benefit of a federal securities regulator would be the resulting ability of the federal government to use both banking and securities regulation to better address regulatory challenges, including systemic risks. Banks are both significant traders as well as significant end-users of derivatives and have a dominant share of Canadian trading in over-the-counter derivatives. Banks also offer their customers, directly or through investment dealer subsidiaries, a variety of investment products and services. Canadian banks own many of the larger investment dealers and mutual fund managers in the country.

Record (Ontario), Vol. XXIV, Christie at pp. 7-8, paras. 14-15

See also: Record (CBA), Vol. XXVIII, Wrobel at pp. 25-31, paras. 39-53

Record (Canada), Vol. I, Report of Frank Milne (The Impact of Innovation and Evolution n the Regulation of Capital Markets), May 19, 2010 ["Milne"] at pp. 193 and 196, paras. 4.5, 5.2

C. Ontario has consistently advocated for a single national securities regulator

15. Ontario has consistently and strongly advocated for a single national securities regulator. In 2003, an advisory committee appointed under the Ontario *Securities Act* to conduct a comprehensive review of Ontario's securities laws recommended replacement of the provincial system of securities regulation by a single securities regulator. In 2004, a standing committee of the Ontario Legislative Assembly unanimously endorsed that recommendation, and agreed that a single regulator was needed to address effectively the regulatory challenges faced in securities regulation.

Record (Ontario), Vol. XXIV, Christie at p. 12, para. 27 and Exhibits C and D, pp. 59-77

16. In 2004, Ontario released its proposal for a single provincial-territorial regulator, administering a single set of securities laws, with a single fee schedule. This paper was intended to provide a basis for discussions with the other provinces and territories and industry stakeholders to build consensus on a model for a modern new securities framework in Canada.

Record (Ontario), Vol. XXIV, Christie at p. 12, para. 28

17. Ontario was not a signatory to the 2004 Provincial/Territorial Memorandum of Understanding Regarding Securities Regulation committing to the passport system. Ontario was of the view that the passport system would not materially improve securities regulation. Ontario instead supported replacing the existing patchwork system of 13 provincial and territorial regulators with a common securities regulator. Ontario identified a number of specific concerns with the proposed passport system, including:

a. It would not significantly improve investor protection or enforcement measures;
b. It would not reduce confusion resulting from 13 different sets of rules;
c. It might in fact delay the move to a single common regulator by diverting resources and slowing momentum;

d. There was no improvement in the ability to respond to emerging market issues;

e. Provincial/territorial regulators would continue charging multiple fees even though a 'primary' regulator does most of the work under the passport system.

Record (Ontario), Vol. XXIV, Christie at pp. 12-13, para. 29

18. In 2008, the OSC noted many of the same concerns with the passport system that had been identified earlier by the Ontario government, including:

a. The passport system does not fully eliminate the fees, costs and duplication that result from multiple regulators;

b. The passport system may not fully promote consistency in regulatory decision-making; and

c. The passport system does not provide for more effective enforcement.

Record (Ontario), Vol. XXIV, Christie at p. 13, para. 30 and Exhibit F, pp. 84-123

19. Ontario has continued to advocate for a single securities regulator in the intervening years. Ontario appointed an expert panel (the Crawford Panel) whose June 2006 Final Report recommended that federal, provincial and territorial governments participate in the establishment of a new Canadian Securities Commission. Ontario recommended this Report as "a meaningful opportunity for governments to work together to build a real competitive advantage, to attract investment and to lay the foundation for strong economic growth."

Record (Ontario), Vol. XXIV, Christie at pp. 13-14, para. 31

20. Ontario remains of the view that a single securities regulator is in the best interest of market participants, Ontario, and Canada as a whole. Ontario is actively participating in the initiative that is the subject of these proceedings by working with the federal government, other interested provinces and territories, and the Canadian Securities Transition Office and Advisory Committee to achieve a strong national securities regulator that reflects and promotes Ontario's and Canada's interests.

Record (Ontario), Vol. XXIV, Christie at p. 14, para. 32

2010 Ontario Economic Outlook and Fiscal Review at 34 [Ontario Book of Authorities, Tab 10]

D. The passport system is an insufficient regulatory response

21. The passport system seeks to allow public companies, dealers and other regulated entities to deal with the regulators in all passport provinces and territories through a single contact, a "principal regulator", in relation to specified regulatory filings and applications. Under the passport system, the approval of a specified filing or application by the principal regulator is given effect by operation of law in the non-principal jurisdictions.

Record (Ontario), Vol. XXIV, Christie at p. 14, para. 33 and Appendix 1 "Description of the Passport System", pp. 27-29

22. It was recognized by the participating provinces that a passport system would need to be supported by highly harmonized, streamlined and simplified securities laws in order to work effectively. Although Ontario did not join the passport system, it has actively supported harmonization of provincial securities laws and has devoted significant resources to this effort. The Canadian Securities Administrators ["CSA"] is a group made up of the 13 provincial and territorial securities regulators working together to design policies and regulations that are consistent across the country. The OSC has played a leading role within the CSA in developing the "national instruments" that are the basis of securities regulators' attempts to achieve highly harmonized securities laws.

Record (Ontario), Vol. XXIV, Christie at p. 15, paras. 34-35

23. A series of "interface" policies has been developed between Ontario and the participating passport jurisdictions, such that Ontario is recognized by the other jurisdictions as the "principal regulator" for market participants based in Ontario. As a result, a decision made by the OSC as "principal regulator" to issue a prospectus receipt, grant certain types of exemptive relief, or grant registration to an Ontario-based market participant applies automatically in the other jurisdictions where the same decision is sought. This is referred to as "one-way passport", since Ontario retains its ability to review the decisions made by any passport jurisdiction when the passport jurisdiction is acting as principal regulator, but the converse is not true.

Record (Ontario), Vol. XXIV, Christie at pp. 15-16, para. 36

24. The passport system is limited in its regulatory scope. The system applies to filing prospectuses in multiple jurisdictions, filing certain applications for exemptive relief in multiple jurisdictions, and becoming a registrant in multiple jurisdictions. In practice, there are limitations on the passport system's effectiveness even in the three regulatory areas where the system applies. Ontario continues to be concerned about the limitations of the passport system, including the following:

a. The passport system perpetuates a high degree of variation among jurisdictions;

b. The passport system does not eliminate multiple fees;

c. Implementation of policy initiatives is too slow;

d. The passport system does not provide Canada with a strong international voice; and

e. The passport system does not address many regulatory enforcement-related concerns.

Record (Ontario), Vol. XXIV, Christie at pp. 16-25, paras. 37-63

See also: Record (CBA), Vol. XXVIII, Wrobel at pp. 19-20, paras. 27-29

Record (FAIR Canada), Vol. XXXII, Pascutto at pp. 9-10, paras. 21-22

Record (IIAC), Vol. XXXI, Affidavit of Philip S.W. Smith sworn October 29, 2010, Exhibit C, pp. 22-30

Record (Canada), Vol. I, First Trebilcock Report at pp. 260-262, para. 61

25. Efforts at provincial harmonization of securities laws to date have been incomplete. Substantial differences in provincial securities law persist, even after years of attempted coordination through the CSA. These differences exist even among provinces who are participants in the passport system, where different views about, for instance, the appropriate balance between investor protection and facilitating capital raising by business have resulted in different regulatory responses.

Record (Ontario), Vol. XXIV, Christie at pp. 17-21, paras. 39-48

26. The capacity to assess and react swiftly to unexpected developments in capital markets is a necessary feature of a modern securities regulatory system. Ontario's preference for a single national regulator is based in part on its belief that improvement is needed in the ability of the current provincial system to deliver a timely response to market innovations and emerging issues. The experience to date with the attempts of the CSA to coordinate the rulemaking of its members reinforces this view.

27. The absence of a mechanism at the CSA to resolve differences of opinion, other than consensus, contributes to a slower regulatory response (or no response) to market developments, investor protection issues, and market participants' concerns regarding rule deficiencies. This need to achieve consensus results in rule-making and policy initiatives that are frequently delayed (or even frustrated). While regulatory decisions should not necessarily be rushed, the inability to move swiftly without consensus is a weakness of the current system.

Record (Ontario), Vol. XXIV, Christie at pp. 18-21, paras. 43-48 and Exhibit C, *Five-Year Review Committee Final Report* at 33-34, pp. 64-65

See also: Record (CBA), Vol. XXVIII, Wrobel at pp. 19-20, para. 27

Record (FAIR Canada), Vol. XXXII, Pascutto at pp. 6-7, paras. 15-16

Record (Canada), Vol. I, First Trebilcock Report at pp. 260-263, paras. 61-63

Record (IIAC), Vol. XXXI, Affidavit of Ian C.W. Russell sworn October 28, 2010 at p. 73, para. 13

PART II – ONTARIO'S POSITION ON THE ISSUE

28. Ontario submits that the reference question should be answered in the affirmative.

PART III – STATEMENT OF ARGUMENT

29. Ontario adopts the submissions of Canada at paras. 46-88 of Canada's factum. In addition, Ontario relies on the following submissions.

A. This Court's approach to the federal trade and commerce power

30. This Court has held that the scope of the federal trade and commerce power should be defined carefully and on a case by case basis. The test set out by this Court in *General Motors* is designed to strike an appropriate balance between provincial powers over property and civil rights and the need for effective federal regulation of matters that are crucial to the national economy and therefore require the development and implementation of national public policy. Careful application of this test will strike an appropriate balance between federal and provincial powers.

> ***Attorney General of Canada v. Canadian National Transportation*, [1983] 2 S.C.R. 206 [Canada Book of Authorities, Tab 1]**
>
> ***General Motors of Canada v. City National Leasing*, [1989] 1 S.C.R. 641 [Canada Book of Authorities, Tab 13]**
>
> ***Kirkbi AG v. Ritvik Holdings Inc.*, [2005] 3 S.C.R. 302 at paras. 15-16 [Canada Book of Authorities, Tab 16]**

31. In *General Motors*, this Court identified five indicia, the presence of which are likely to indicate that federal legislation relates to an economic matter of genuine national concern. Their presence or absence is, however, not decisive of the constitutional issue. They need not all be present to find valid federal authority. This Court's approach to characterization requires a careful case by case analysis to determine whether the legislation addresses a genuine national concern.

> ***General Motors of Canada v. City National Leasing*, [1989] 1 S.C.R. 641 [Canada Book of Authorities, Tab 13]**

32. Ultimately, the issue for this Court to determine is whether Parliament has a rational basis for concluding that regulation of the capital markets raises an economic concern of genuine national interest. The rational basis test has been adopted by this Court in federalism cases in recognition of the fact that governments are best situated to assess competing economic and social science evidence and to make decisions based on complex policy considerations. This Court's role is not to decide which of the many expert reports filed on this reference is "correct", or whether the proposed Act is necessary as a matter of fact; this Court has held that these decisions based on legislative

facts are best made by governments. Moreover, it is not relevant whether the proposed Act might have been better designed, or whether the federal government has chosen the best means to achieve its purpose. In the *Anti-Inflation Reference*, this Court described the nature of the inquiry in a federalism case as follows:

> …the Court may be asked to consider extrinsic material bearing on the circumstances alleged, both in support of and in denial of the lawful exercise of legislative authority. In considering such material and assessing its weight, the Court does not look at it in terms of whether it provides proof of the exceptional circumstances as a matter of fact. The matter concerns social and economic policy and hence governmental and legislative judgment… the extrinsic material need go only so far as to persuade the Court that there is a rational basis for the legislation which it is attributing to the head of power invoked in this case in support of its validity.
>
> ***Re: Anti-Inflation Act,*** **[1976] 2 S.C.R. 373 at 422-423 [Canada Book of Authorities, Tab 32]**
>
> ***Reference re Firearms Act (Can.),*** **[2000] 1 S.C.R. 783 at paras. 2 and 56 [Ontario Book of Authorities, Tab 7]**
>
> **Peter Hogg, *Constitutional Law of Canada,* 5th ed. supplemented, looseleaf (Toronto: Carswell, 2007) at 60-17 [Ontario Book of Authorities, Tab 11]**

33. Ontario submits that there is a rational basis for concluding that regulation of the capital markets raises an economic concern of genuine national interest. This conclusion is supported by the complex, international and highly integrated nature of contemporary capital markets. The increasingly national and international character of capital markets in Canada is evidenced by the restructuring and continuing evolution of stock exchanges, marketplaces and the self-regulatory organizations that oversee securities market participants. The need for effective federal regulation is further supported by national and international concern regarding the effective management of systemic risk, the considered analysis undertaken in the many studies and reports that have consistently recommended the creation of a single national regulator, and the international community's continuing criticism of Canada's fragmented regulatory approach to securities regulation.

Record (Canada), Vol.1, First Trebilcock Report, at pp. 74-78, paras. 34-42

See also: Record (CBA), Vol. XXVIII, Wrobel at pp. 16-17, paras. 23-24; Record (Canada) Vol. 1, Milne, at p. 186, para. 3.2, and at p. 200, para. 6.8

34. This Court can affirm the federal government's constitutional authority to enact the proposed Act on the basis of the existing case law. It is unnecessary to expand the scope of the federal trade and commerce power, as the five indicia identified in *General Motors* are satisfied in this case. They demonstrate that the proposed Act addresses a matter of genuine national concern, one that is no longer accurately characterized as a collection of diverse local ones.

B. The proposed Act is concerned with trade as a whole

35. The proposed Act involves comprehensive national regulation of capital-raising activities that are foundational to the Canadian economy. It would regulate these activities in industries from all economic sectors across the country. The proposed Act accordingly does not regulate a particular trade or industry of local concern; it regulates trade as a whole.

36. That the proposed Act is aimed at matters of national economic concern is clearly set out in its Preamble. The Preamble recognizes that capital markets "affect the well-being and prosperity of all Canadians" and "are increasingly national and international in scope". The Preamble goes on to identify the national interest in competitive capital markets, comprehensive and coordinated enforcement, and promoting Canada's interests internationally through the development of consistent regulatory policies for capital markets.

37. There is significant evidence to support the validity of the federal government's legislative approach. Capital markets are recognized as critical elements of a strong, dynamic and competitive Canadian economy. Capital markets enable firms from all sectors of the economy to raise capital for new investment and provide Canadians in all provinces and territories with opportunities to invest. Historically, Canada's capital markets have supplied funds that have financed the development and growth of all sectors of the economy.

Record (Ontario), Vol. XXIV, Christie at pp. 3-4, para. 8

See also: Record (Canada), Vol. II, Tab 5, Committee to Review the Structure of Securities Regulation in Canada (It's Time) ["Wise Person's Committee Report"] at pp. 70-72

38. Growing recognition of the need for effective management of systemic risk at the international level underscores the national interest in comprehensive national securities regulation. The recent economic crisis highlighted both the degree of inter-connectedness of global markets and the sensitivity of the world's economies to capital markets developments. It is increasingly important to have a Canadian presence on the international scene with the ability to speak in the interests of the national economy and to implement comprehensive national policy.

Record (Ontario), Vol. XXIV, Christie at pp. 21-23, paras. 49-55

See also: Record (Canada), Vol. I, Milne at pp. 195-196, 210-212 and 216-217, paras. 5.1, 5.2, 10.6, 10.9, 11.7; Vol. I, First Trebilcock Report at pp. 240-243 and 254-255, paras. 26-30, 50; Vol. I, Report of Michael J. Trebilcock (Report in Reply to Quebec and Alberta Experts), August 23, 2010 ["Trebilcock Reply Report"] at p. 291, para. 24; Vol. II, Wise Person's Committee Report at pp. 104-105; Vol. II, Tab 7, Expert Panel on Securities Regulation (Final Report and Recommendations) ["Expert Panel Report"] at pp. 134 and 163

Record (CBA), Vol. XXVIII, Wrobel at pp. 28-34, paras. 49-61

39. The regulation of the capital markets is analogous to the regulation of anti-competitive trade practices by a federal agency, which this Court upheld in *General Motors* as a valid exercise of the general branch of the federal trade and commerce power. Both competition and securities law regulate practices across all industries that are important to the economic welfare of the country as a whole. Like restricting anti-competitive trade practices, ensuring confidence in Canada's capital markets "is not an issue of purely local concern but one of crucial importance for the national economy". Similar to the federal *Combines Investigation Act*, the proposed Act is a "complex scheme of… regulation aimed at improving the economic welfare of the nation as a whole."

***General Motors of Canada Ltd. v. City National Leasing*, [1989] 1 S.C.R. 641 at 678 [Canada Book of Authorities, Tab 13]**

See also: *Kirkbi AG v. Ritvik Holdings Inc.*, [2005] 3 S.C.R. 302 at para. 16 [Canada Book of Authorities, Tab 16]

40. There has been recognition in the academic literature that federal regulation of securities would involve the regulation of trade as a whole so as to satisfy the third indicium of the *General Motors* test:

> We suggest that analysis of the Canadian securities markets as simply a co-existence of separate local industries is myopic. Such analysis focuses on individual transactions, not on the effect of the collective activity of securities markets participants. Despite the popular term "securities industry," ensuring the integrity of the markets and the availability of capital to businesses and of investment opportunities to individuals is much more than a single industry. It is not merely that many people and businesses across Canada participate in their local securities markets. Many products, including light beer, are consumed widely across the country, but fail to surpass their particularity to be classified as "general". Rather, the securities markets form an integral part of the infrastructure of the Canadian economy. The provision of capital is more central to the broad spectrum of businesses than are other suppliers. Even if most companies purchase insurance of various kinds, insurance is not their lifeblood the way capital is…
>
> Securities is part of the economic framework of the nation… There are few, if any, other areas of commerce that could be characterized similarly, so securities would not merely be the first of many areas to fall to Parliament under a reassessment of the division of powers. The provinces would not need to fear a much broader expansion of federal power based on our argument.
>
> **R. Leckey and E. Ward, "Taking Stock: Securities Markets and the Division of Powers" (1999) 22(2) Dalhousie L.J. 250 at 272 [Ontario Book of Authorities, Tab 12]**
>
> **See also: *Multiple Access Ltd. v. McCutcheon,* [1982] 2 S.C.R. 161 at 173-174 [Canada Book of Authorities, Tab 21]**

41. Quebec and Alberta argue that the proposed Act regulates a local securities industry, rather than trade as a whole. The regulation of a particular trade is, following *Citizens Insurance Co. of Canada v. Parsons*, a matter of provincial rather than federal competence. This argument ignores the fact that the Act would regulate a diverse range of market participants. It is not only dealers and brokers, who might be characterized as participants in a discrete "securities industry", who would be regulated under the proposed regime. The regulation of dealers is only one component of a broad regulatory scheme that applies to diverse market participants including buyers and sellers of

securities and derivatives, investment dealers and advisors, salespersons, issuers, directors, and security holders, who may be engaged in any number of business activities. The proposed Act would subject the raising of capital by issuers engaged in businesses in all sectors of the economy to comprehensive national regulation. Moreover, this argument ignores the national, international and highly integrated nature of the capital markets, and the crucial importance of those markets to the welfare of the whole nation. For these reasons, arguments that the proposed Act regulates a single trade of local concern, albeit on a national basis, must fail.

> ***Labatt Breweries of Canada Ltd. v. Attorney General of Canada,*** **[1980] 1 S.C.R. 914 [Canada Book of Authorities, Tab 18]**
>
> ***Citizens Insurance Co. of Canada v. Parsons,*** **(1881), 7 App. Cas. 96 [Canada Book of Authorities, Tab 9]**

C. The proposed Act is of a nature that provinces jointly or severally would be constitutionally incapable of enacting

42. The pith and substance of the proposed Act is the comprehensive regulation of capital markets activity across Canada, under the continuing oversight of a single market regulator applying a single set of laws and rules. Such legislation is not of a nature that the provinces are capable of enacting, either jointly or severally.

43. Provincial legislatures have undoubted competence to regulate the capital markets within each province, pursuant to their legislative jurisdiction over property and civil rights in the province. Moreover, Canadian courts have recognized that, in the course of regulating capital markets within the province, provincial legislation validly may have incidental effects on interprovincial or extraterritorial matters.

> ***Multiple Access Ltd. v. McCutcheon,*** **[1982] 2 S.C.R. 161 at 183-185 [Canada Book of Authorities, Tab 21]**
>
> ***Global Securities Corp. v. British Columbia (Securities Commission),*** **[2000] 1 S.C.R. 494 at para. 38 [Canada Book of Authorities, Tab 14]:**
>
> [W]here, as here, there is a clearly dominant intraprovincial purpose, the mere fact that the province is co-operating with a foreign authority in the pursuit of that purpose will not change the law's pith and substance… In

> short, the extra-provincial effects of s. 141(1)(b) are clearly incidental to the dominant purposes described above.
>
> ***Gregory & Co. v. Quebec Securities Commission,*** **[1961] S.C.R. 584 at 587-588 [Canada Book of Authorities, Tab 15]**
>
> **See also *Reference re Upper Churchill Water Rights Reversion Act,* [1984] 1 S.C.R. 297 at 332 [Ontario Book of Authorities, Tab 8]:**
>
> Where the pith and substance of the provincial enactment is in relation to matters which fall within the field of provincial legislative competence, incidental or consequential effects on extra-provincial rights will not render the enactment *ultra vires*. Where, however, the pith and substance of the provincial enactment is the derogation from or elimination of extra-provincial rights then, even if it is cloaked in the proper constitutional form, it will be *ultra vires*.

44. For example, this Court held in *Global Securities* that British Columbia validly could require registered brokers in the province to produce records in their control "to assist in the administration of the securities laws of another jurisdiction" for the dominant purposes of (1) better enforcing B.C. securities regulation by ensuring co-operation from other reciprocating jurisdictions and (2) discovering wrongdoings by B.C. registrants in other jurisdictions. Given that the dominant purposes of the enactment were held to be intraprovincial, this Court held that any extraterritorial effects were only incidental.

> ***Global Securities Corp. v. British Columbia (Securities Commission),*** **[2000] 1 S.C.R. 494 at paras. 3-5 and 26-38 [Canada Book of Authorities, Tab 14]**
>
> **See also *R. v. W. McKenzie Securities Ltd.* (1966) 56 D.L.R. (2d) 56 (Man. C.A.) at 62-63 [cited with approval in *Global Securities Corp.*] [Canada Book of Authorities, Tab 30]:**
>
> It seems clear that the true nature of the provincial statutes above considered, no less than the *Securities Act* of our own Province, is to provide protection to the public through a system of regulating and supervising the conduct of persons who engage in trading activities in securities within the Province. The *Securities Act* of Manitoba is not designed to reach out beyond provincial borders and to restrain conduct carried on in other parts of Canada or elsewhere. Its operation is effective within Manitoba, and nowhere else. For a person to become subject to its restraint he must trade in securities in Manitoba. This is not to say that a non-resident of Manitoba can never become subject to the controls of the statute. If the activities of such a non-resident can fairly and properly be

construed as constituting trading within the Province, then they fall within the purview of the Act.

45. The provinces can incidentally affect extraterritorial matters while regulating their provincial capital markets, but they cannot, as a matter of constitutional law, legislate directly in relation to interprovincial and international trade or matters outside the province. In other words, a statute the dominant purpose of which is to regulate capital markets activities wherever they occur in Canada would be *ultra vires* the jurisdiction of any province. Given the increasingly interconnected and global nature of capital markets activity, outlined above, this is a significant limitation on the provinces' ability to regulate the capital markets.

46. For example, if a provincial regulator, at the conclusion of an enforcement proceeding, makes an order in the public interest (such as a cease trade order or an order prohibiting a person or company from acting as an officer or director of an issuer), that order will have application only within the province. For the order to have effect across Canada, it will be necessary for each provincial and territorial regulator to make a similar reciprocal order. Each provincial and territorial regulator considering a reciprocal order provides a further opportunity to be heard. This may require up to 13 separate hearings under 13 separate statutory procedures, resulting in significant additional cost and delays in the issuance of reciprocal orders, and in any event may lead to inconsistent outcomes.

See: Table of provincial/territorial reciprocal order provisions [Ontario authorities, Tab 13]

Record (Ontario), Vol. XXIV, Christie at pp. 23-24, para. 58

See also: Record (CBA), Vol. XXVIII, Wrobel at pp. 22-23, para. 33

47. By contrast, under the proposed Act, the Canadian Securities Tribunal could make a public interest order that would have effect throughout Canada in every province in which the proposed Act applied. Only Parliament has the constitutional competence to grant to an administrative agency powers that can be exercised throughout the country.

Proposed Act s. 139

48. Quebec and Alberta argue that the proposed Act merely reproduces or duplicates provincial securities law, thereby demonstrating that the provinces are already capable of

regulating securities. This argument fails to take into account the territorial limitations that apply to the exercise of provincial (but not federal) powers. In addition, the argument assumes that the regulation of capital markets is a matter of mutually-exclusive "watertight compartments" – if the provincial legislatures have validly enacted provisions regulating securities within the province, it follows Parliament may not enact similar provisions regulating capital markets across Canada. Ontario submits, to the contrary, that the regulation of capital markets involves a double aspect: the provinces have legislative competence to regulate securities as a matter of property and civil rights in the province, and Parliament has legislative competence to regulate securities as a matter of general trade and commerce affecting Canada as a whole.

> ***General Motors of Canada Ltd. v. City National Leasing,*** **[1989] 1 S.C.R. 641 at 669 [Canada Book of Authorities, Tab 13]**
>
> ***OPSEU v. Ontario (Attorney General),*** **[1987] 2 S.C.R. 2 at 18 [Ontario Book of Authorities, Tab 4]**
>
> ***Canadian Western Bank v. Alberta,*** **[2007] 2 S.C.R. 3 at paras. 35-37 [Ontario Book of Authorities, Tab 1]**

49. This Court held in *General Motors* that the existence of provincial legislation providing remedies for anti-competitive behaviour within a province did not impair Parliament's jurisdiction to enact comprehensive competition legislation under the general trade and commerce power, stating that "the presence of an already existing action in Quebec law does not argue for invalidating federal legislation." This conclusion applies with equal force here: the presence of an already existing provincial scheme regulating capital market activities and participants in the province does not argue for invalidating a proposed federal scheme that, in pith and substance, is directed to regulating capital markets throughout the country as a whole. The Court's holding in *General Motors* is a complete answer to Quebec and Alberta's argument that federal-provincial duplication is indicative of constitutional infirmity.

> ***General Motors of Canada Ltd. v. City National Leasing,*** **[1989] 1 S.C.R. 641 at 681-682 [Canada Book of Authorities, Tab 13]**

50. Like restricting anti-competitive practices, ensuring confidence in Canada's capital markets "is not an issue of purely local concern but one of crucial importance for

the national economy:" *General Motors* at 678. This Court has recognized that "the securities market has been an international one for years" and that "the Internet has greatly increased the ability of securities traders to extend across borders:" *Global Securities Corp.* at para. 28. Ontario is sensitive to the possibility that regulatory failure in one province could plausibly lead to a loss of international confidence in Canadian capital markets, particularly since under the passport system the decision of one provincial regulator applies across all passport jurisdictions. Although the provinces may each voluntarily enact a uniformly high level of securities regulation in each province, they cannot compel one another to do so and thus, unlike Parliament, cannot ensure a uniformly effective system of capital markets regulation on a national basis.

***General Motors of Canada Ltd. v. City National Leasing,* [1989] 1 S.C.R. 641 at 678 [Canada Book of Authorities, Tab 13]**

***Global Securities Corp. v. British Columbia (Securities Commission),* [2000] 1 S.C.R. 494 at para. 28 [Canada Book of Authorities, Tab 14]**

51. Ontario is of the view that neither the passport system nor the harmonization initiatives undertaken through the CSA constitute an adequate substitute for a single national capital markets regulator. The passport system is limited in its regulatory scope (applying as it does only to the filing of prospectuses and certain applications for exemptive relief and to becoming a registrant in multiple jurisdictions) and in practice there are limitations to its effectiveness even in the three regulatory areas where the system applies.

See paras. 17-18 and 21-25 above

52. More fundamentally, Ontario is concerned that no provincial regulator making a decision concerning an application or filing under the passport system is responsible for considering the interests of investors and businesses in other provinces or across Canada as a whole. By contrast, the proposed Act would direct the Canadian Securities Regulatory Authority to take into account "the interests of investors and businesses in all sectors and regions across Canada" in pursuing the purposes of the proposed Act. As the preamble to the proposed Act correctly notes, capital markets activities "affect the well-being and prosperity of all Canadians."

Proposed Act, preamble and s. 16(1)(b)

53. As set out above, substantial differences in provincial securities law persist, even after years of attempted coordination through the CSA. The persistence of these different regimes demonstrates that the provinces and territories have not fully harmonized their approach to regulation. As a result, investors across Canada are not offered the same access to investment opportunities and do not have the benefit of a consistent set of protections.

Record (Ontario), Vol. XXIV, Christie at pp. 17-18, para. 40-41

54. Ultimately, differences among jurisdictions arise because securities enactments, regulations and rules (even so-called "national" rules) remain provincial laws which are subject to variations and differing interpretation across jurisdictions. Differences may also arise when securities laws are amended or repealed. Even if the provinces were to succeed in harmonizing their securities statutes, differences could be introduced at any time in any province or territory, according to the decisions of the provincial legislature or securities regulator. Only a single federal regulator administering a single federal body of law has the power to ensure that market rules are applied consistently across the country.

Compare *Kirkbi AG v. Ritvik Holdings Inc.*, [2005] 3 S.C.R. 302 at para. 29 [Canada Book of Authorities, Tab 16]:

> Divided provincial and federal jurisdiction could mean that the provincial law could be changed by each provincial legislature.

55. Quebec and Alberta argue that diversity among provinces in the regulation of the capital markets is a desirable feature and consistent with Canadian federalism. However, this argument ignores the particular need for a consistent regulatory approach across Canada to today's capital markets. This need arises from the mobility of capital, the importance of capital markets to the Canadian economy as a whole, the effects of multiple regulators on increasing compliance costs and other costs of capital, the nature of systemic risk, and the need to establish a uniformly high standard of investor protection across the country. Just like the federal competition law, the proposed Act is legislation "aimed at the economy as a single integrated national unit rather than as a collection of separate local enterprises."

Record (Canada), Vol. I, First Trebilcock Report at pp. 249-254, paras. 43-49

Record (Canada), Vol. I, Trebilcock Reply Report at pp. 277-278 and 280-284, paras. 1-2, 7 and 13

Record (CBA), Vol. XXVIII, Wrobel at p. 17, para. 24

***General Motors of Canada Ltd. v. City National Leasing*, [1989] 1 S.C.R. 641 at 680 [Canada Book of Authorities, Tab 13]**

56. A single national regulator can provide a degree of political accountability and regulatory responsiveness that a provincially-coordinated system (such as the CSA) is incapable of providing. The proposed Act would establish a single Canadian Securities Regulatory Authority accountable to a single board of directors (and ultimately to the federal Minister of Finance, in consultation with the Council of Ministers). By contrast, the CSA is hindered in its rule-making, policy initiatives and priority-setting by the need to achieve consensus among 13 provincial and territorial securities regulators accountable to 13 different governments, with the result that regulatory responses to emerging issues are frequently delayed or even frustrated. The federal proposal also contemplates the pooling of current provincial securities resources and service delivery through local offices, thereby promoting consistency of investor protection across the country while preserving regional expertise. Ontario expects that Toronto, the locus of Canada's financial industry, will play a central role in the proposed federal regulatory regime.

See paras. 6 and 25-27 above

Canadian Securities Transition Office, *Transition Plan for the Canadian Securities Regulatory Authority*, July 12, 2010, ["CSTO Transition Plan"] at 6.5 [Canada Book of Authorities, Tab 80]

57. A key benefit of a federal securities regulator would be the resulting ability of the federal government to use both banking and securities regulation to better address regulatory challenges, including systemic risks. One of the purposes of the proposed Act is to "contribute, as part of the Canadian financial regulatory framework, to the integrity and stability of the financial system." By contrast, provincial regulation of securities makes the response to systemic risk more difficult. Although Ontario recently enacted legislative amendments establishing a framework for the regulation of over-the-counter

derivatives, a measure intended to ensure that Ontario securities regulation is in step with international efforts to address systemic risk, nonetheless there is no single national securities regulator responsible for addressing sources of systemic risk that are national or international in character, as by their nature systemic risks are likely to be. A federal securities regulator could ensure that the derivatives market in Canada was regulated across the country, including in provinces where derivatives are not currently regulated, and could co-ordinate such regulation with federal banking regulation and with international regulators.

See para. 7 above

Record (Ontario), Vol. XXIV, Christie at pp. 7-8 and 22, paras. 14-15 and 53

Record (Canada), Vol. I, First Trebilcock Report at pp. 240-243, paras. 26-30

Record (CBA), Vol. XXVIII, Wrobel at pp. 25-31, paras. 39-53

Proposed Act, s. 9(c)

***Helping Ontario Families and Managing Responsibly Act, 2010*, S.O. 2010, c. 26, Sched. 18 [Ontario Book of Authorities, Tab 9]**

Ontario, Ministry of Finance, *2010 Ontario Economic Outlook and Fiscal Review* at 34 [Ontario Book of Authorities, Tab 10]

58. Because of the increasingly global nature of capital markets, the ability to respond to unexpected international market developments is often related to the ability to function effectively on the international scene. Canada needs to speak with a strong single voice in international matters relating to the regulation of capital markets. The provinces are incapable of providing that voice. For example, the OSC and the Autorité des Marchés Financiers are the only two of Canada's thirteen provincial and territorial regulators that are voting members of the International Organization of Securities Commissions ["IOSCO"]. They cannot speak for the other provinces or indeed for Canada as a whole. In addition, international efforts in financial sector coordination and in addressing financial sector issues have increasingly occurred through the G8, the G20, and related bodies. These international forums involve only national entities, not provincial ones. In Ontario's experience, the lack of a single cohesive international voice for Canada in

international matters can result in uneven access among provincial regulators to the benefits of international cooperation.

Record (Ontario), Vol. XXIV, Christie at pp. 21-25, paras. 50-55, 61

See also: Record (CBA), Vol. XXVIII, Wrobel at pp. 31-34, paras. 54-61

D. The failure to include one or more provinces or territories in the scheme would jeopardize the successful operation of the scheme in other parts of the country

59. The fifth indicium identified in *General Motors* is whether the failure to include one or more provinces or territories in a federal legislative scheme would jeopardize its successful operation in other parts of the country. Although the presence of this indicium suggests that legislation is likely to relate to a truly national concern, its absence does not necessarily signal constitutional infirmity. Nonetheless, Ontario submits that this indicium is met in this case.

***General Motors of Canada Ltd. v. City National Leasing*, [1989] 1 S.C.R. 641 [Canada Book of Authorities, Tab 13]**

60. This indicium should be approached in light of its purpose, which is to assess whether the subject matter of federal legislation involves a national concern or a collection of diverse local ones. If the federal government were to pass legislation intended to apply in only certain provinces, this could be persuasive evidence that the legislation did not involve a truly national concern. That is not the case here where the federal government has decided, for reasons consistent with this Court's constitutional policy, to enact a national scheme through voluntary means.

61. Ontario submits that the fifth indicium is satisfied given that the proposed Act is intended to establish one regulatory regime in a comprehensive manner across the country, and given the importance of co-operative federalism both to federal-provincial relations and in the development of constitutional doctrine.

62. The proposed Act is clear that it is intended to be comprehensive national coverage that will apply in all provinces and territories. The Preamble provides that "Parliament intends to create a single Canadian securities regulator, supported by a comprehensive statutory and regulatory regime that applies across Canada." The

Preamble goes on to state "Parliament chooses to do so through a process under which the regime will apply as willing provinces and territories opt in."

Proposed Act, Preamble

63. The Transitional Regime is set out in Part 15 of the Act. The Governor in Council may designate a province as a participating province after receiving the written consent of the province's Lieutenant Governor in Council. Before making the recommendation, the Minister must be satisfied that the proposed single securities regulatory regime will apply in the province to be designated. The transition provisions cease to have effect on a date fixed by the Governor in Council once all of the provinces and territories have opted in to the federal regime. The Act does not include a mechanism for provinces to opt out of the scheme. The Act therefore clearly contemplates that transition is temporary and that universal participation is the goal.

Proposed Act, s. 250

64. This Court has recognized that intergovernmental dialogue and agreement in areas of overlapping jurisdiction is desirable as a matter of constitutional policy. The transitional regime encourages such a process of intergovernmental dialogue, negotiation and agreement between federal and provincial governments about the exercise of legislative powers. The federal scheme contemplates that, following the negotiation of mutually agreeable Memoranda of Understanding, provinces will exercise their jurisdiction in the shared area of securities regulation by consenting to application of the proposed Act as contemplated in s. 250 of the Act. The proposed Act would maintain existing joint federal and provincial responsibility for investigation and prosecution of criminal securities offences. This arrangement recognizes the provincial interest and expertise in investigating and prosecuting interprovincial and transnational criminal securities offences.

CSTO Transition Plan [Canada Book of Authorities, Tab 80]

65. This Court has recognized that constitutional jurisprudence plays an important role in supporting co-operative federalism. One of the fundamental objectives of federalism is "to foster co-operation among governments and legislatures for the common good." Constitutional doctrines "must include a recognition that the task of maintaining

the balance of powers in practice falls primarily to governments, and constitutional doctrine must facilitate, not undermine what this Court has called "co-operative federalism"."

> ***Canadian Western Bank v. Alberta*, [2007] 2 S.C.R. 3 at paras. 22 and 24 [Ontario Book of Authorities, Tab 1]**

66. It would be contrary to contemporary notions of co-operative federalism to endorse an all-or-nothing approach that would make it valid for Parliament to impose federal legislation on the provinces but invalid for Parliament to invite the provinces to participate voluntarily.

> ***Husky Oil Operations Ltd. v. Minister of National Revenue*, [1995] 3 S.C.R. 453 at para. 162 [Ontario Book of Authorities, Tab 3]**
>
> ***Reference re Employment Insurance Act*, [2005] 2 S.C.R. 669 at para. 10 [Ontario Book of Authorities, Tab 6]**
>
> ***Fédération des producteurs de volailles du Québec v. Pelland*, [2005] 1 S.C.R. 292 [Ontario Book of Authorities, Tab 2]**

67. It is not surprising that there is no evidence as to whether all provinces and territories will opt in to the proposed federal scheme, given the inherently prospective nature of the reference process. The current lack of certainty about the practical application of the proposed Act is characteristic of any reference respecting proposed legislation, and should not be a bar to determining the constitutional issue based on the information that is before the Court:

> In the context of a reference, the Court, rather than acting in its traditional adjudicative function, is acting in an advisory capacity. The very fact that the Court may be asked hypothetical questions in a reference, such as the constitutionality of proposed legislation, engages the Court in an exercise it would never entertain in the context of litigation. No matter how closely the procedure on a reference may mirror the litigation process, a reference does not engage the Court in a disposition of rights. For the same reason, the Court may deal on a reference with issues that might otherwise be considered not yet "ripe" for decision.
>
> ***Re Secession of Quebec*, [1998] 2 S.C.R. 217 at para. 25 [Ontario Book of Authorities, Tab 5]**
>
> ***Reference re Firearms Act (Can.)*, [2000] 1 S.C.R. 783 [Ontario Book of Authorities, Tab 7]**

***Reference re Anti-Inflation Act,* [1976] 2 S.C.R. 373 [Canada Book of Authorities, Tab 32]**

68. It is important that the transition period not perpetuate the shortcomings of the current provincial system of regulation. The transition mechanism is not intended to establish as a permanent state of affairs a regime in which multiple securities regulators, including the new federal regulator, operate across the country. As acknowledged in Canada's factum, the federal government "must be careful to minimize disruption to the markets during the transition period." Joint federal and provincial efforts to ensure a smooth transition are vital to the successful launch of the federal regulator. The federal government has indicated its intention to "proceed along a cooperative path…that minimizes disruption to the markets." Ontario expects to work closely with the federal government to achieve this end. The Canadian Securities Transition Office has also recognized that it must "develop an appropriate interface mechanism [between participating and non-participating jurisdictions] to ensure that investors and market participants receive a level of coordinated service inter-jurisdictionally" during the transition period.

Canada's factum at paras. 69 and 133

Record (Canada), Vol. II, Expert Panel Report at 182

CSTO Transition Plan at 1 [Canada Book of Authorities, Tab 80]

Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 39th Parl., 2nd Sess., No. 80 (7 December 2010) at 4035 (Leanna Pendergast, Parliamentary Assistant to the Minister of Finance) [Ontario Book of Authorities, Tab 14]

69. For many years, Ontario has been urging the creation of a single national regulator to address the increasingly complex and difficult challenges posed by capital markets regulation. Ontario remains committed to working with the federal government and other interested provinces and territories to achieve a smooth and efficient transition and a strong national regulator.

2010 Ontario Economic Outlook and Fiscal Review at 34 [Ontario Book of Authorities, Tab 10]

PART IV – COSTS

70. Ontario does not seek costs.

PART V – ORDER SOUGHT

71. Ontario respectfully requests that the reference question be answered in the affirmative. Ontario requests permission to present oral argument of 20 minutes' duration at the hearing of the appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

January 7, 2011

_____
Janet E. Minor

_____
Jennifer August

_____
S. Zachary Green

Of Counsel for the Intervener,
The Attorney General of Ontario

PART VI – TABLE OF AUTHORITIES

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Attorney General of Canada v. Canadian National Transportation, [1983] 2 S.C.R. 206	30
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Citizens Insurance Co. of Canada v. Parsons, (1881), 7 App. Cas. 96	41
Fédération des producteurs de volailles du Québec v. Pelland, [2005] 1 S.C.R. 292	66
General Motors of Canada v. City National Leasing, [1989] 1 S.C.R. 641	2, 30, 31, 39, 48, 49, 50, 55, 59
Global Securities Corp. v. British Columbia (Securities Commission), [2000] 1 S.C.R. 494	43, 44, 50
Gregory & Co. v. Quebec Securities Commission, [1961] S.C.R. 584	43
Husky Oil Operations Ltd. v. Minister of National Revenue, [1995] 3 S.C.R. 453	66
Kirkbi AG v. Ritvik Holdings Inc., [2005] 3 S.C.R. 302	2, 30, 39, 54
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OPSEU v. Ontario (Attorney General), [1987] 2 S.C.R. 2	48
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Re Secession of Quebec, [1998] 2 S.C.R. 217	67
Reference re Anti-Inflation Act, [1976] 2 S.C.R. 373	32, 67
Reference re Employment Insurance Act, [2005] 2 SCR 669	66
Reference re Firearms Act (Can.), [2000] 1 S.C.R. 783	32, 67
Reference re Upper Churchill Water Rights Reversion Act, [1984] 1 S.C.R. 297	43

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