

Privy Council Appeal No. 104 of 1936.

The Attorney-General of British Columbia - - - Appellant

v.

The Attorney-General of Canada and others - - Respondents

In the Matter of a Reference as to whether the Parliament of Canada had legislative jurisdiction to enact the Farmers' Creditors Arrangement Act, 1934, as amended by the Farmers' Creditors Arrangement Act Amendment Act, 1935.

FROM

THE SUPREME COURT OF CANADA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 28TH JANUARY, 1937

Present at the Hearing:

LORD ATKIN.

LORD THANKERTON.

LORD MACMILLAN.

LORD WRIG T.

(MASTER OF THE ROLLS).

SIR SIDNEY ROWLATT.

[*Delivered by* LORD THANKERTON.]

This appeal by special leave challenges the constitutional validity of the Farmers' Creditors Arrangement Act, 1934, which was enacted by the Dominion Parliament as chapter 53 of the Statutes of Canada, 1934.

The following question was referred to the Supreme Court of Canada by the Governor-General in Council on the 18th November, 1935, namely:—

“ Is the Farmers' Creditors Arrangement Act, 1934, as amended by the Farmers' Creditors Arrangement Act Amendment Act 1935, or any of the provisions thereof, and in what particular or particulars or to what extent, *ultra vires* of the Parliament of Canada? ”

Before the Supreme Court, the argument was presented by Counsel on behalf of the Attorney-General of Canada and on behalf of the Attorneys-General of Ontario, Quebec, New Brunswick, British Columbia, Manitoba and Saskatchewan. On the 17th June, 1936, the judgment of the Supreme Court was delivered, and in the formal order the opinion of the Court is expressed as follows:—

“ The Chief Justice, Mr. Justice Rinfret, Mr. Justice Crocket, Mr. Justice Davis and Mr. Justice Kerwin are of the opinion that the statute is *intra vires*; Mr. Justice Cannon is of the opinion that the statute, except section 17, is *ultra vires* and that section 17 is *intra vires*.”

The Attorney-General of British Columbia now appeals against that judgment, and is supported by the respondent the Attorney-General of Ontario; the Attorney-General of Canada defends the judgment.

The appellant raises no question as to section 17 of the Act, which relates to interest and falls under head 19 of section 91 of the British North America Act of 1867, but he maintains that the rest of the Act, does not truly form legislation relating to "bankruptcy and insolvency", but is an invasion of the sphere of the Provincial Legislatures in relation to "property and civil rights in the province" or "matters of a merely local or private nature in the province", which is secured to them by heads 13 and 16 of the British North America Act.

The appellant submitted that the fundamental characteristic of legislation in relation to bankruptcy and insolvency is that it is conceived in the interests of the creditors as a class, and provides for distribution of the debtor's assets among them, and he maintained that the Act here in question is not only lacking in such a characteristic, but is inconsistent therewith, and he gave 12 reasons, which may be compendiously stated as follows:—The Act is mainly designed to keep the debtor farmer on the land at the expense of his creditors; it deals with a stage prior to bankruptcy and insolvency and is designed to prevent bankruptcy by means of a composition which is compulsory on creditors and defeats their interests; it deals with assets belonging to creditors for the benefit of the debtor; the references to bankruptcy are merely ancillary to the main design; and the Act has no general relation to bankruptcy and insolvency, as it refers to farmers only and may refer to certain provinces only.

The long title of the Act of 1934 is "An Act to facilitate compromises and arrangements between farmers and their creditors". The relevant sections of the Act of 1934, as amended by the Act of 1935, may now be referred to. The provisions and rules of the Bankruptcy Act are made applicable by subsections 2 and 3 of section 2 of the Act, which provide,

(2) Unless it is otherwise provided or the context otherwise requires, expressions contained in this Act shall have the same meaning as in the *Bankruptcy Act*, and this Act shall be read and construed as one with the *Bankruptcy Act*, but shall have full force and effect notwithstanding anything contained in the *Bankruptcy Act*, and the provisions of the *Bankruptcy Act* and Bankruptcy Rules shall, except as in this Act otherwise provided, apply *mutatis mutandis* in the case of proceedings hereunder including meetings of creditors.

(3) In any case where the affairs of a farmer have been arranged by a proposal approved by the Court or confirmed by the Board, as hereinafter provided, Part I of the *Bankruptcy Act* shall notwithstanding section seven thereof thereafter apply to such farmer but only failure on the part of such farmer to carry out any of the terms of the proposal shall be deemed to be an act of bankruptcy. Provided that such failure shall not be deemed an act of bankruptcy if, in the opinion of the Court, such act was due to causes beyond the control of such farmer.

The main provisions of the Act, on which the controversy turns, are contained in sections 6 to 11, which relate to compositions, and section 12, under which a Board of Review may be established; these sections provide as follows:—

COMPOSITIONS.

6. (1) A farmer who is unable to meet his liabilities as they become due may make a proposal for a composition, extension of time or scheme of arrangement either before or after an assignment has been made.

(2) Such proposal shall be filed with the Official Receiver who shall forthwith convene a meeting of the creditors and perform the duties and functions required by the *Bankruptcy Act* to be performed by a trustee in the case of a proposal for a composition, extension of time or scheme of arrangement.

7. A proposal may provide for a compromise or an extension of time or a scheme of arrangement in relation to a debt owing to a secured creditor, or in relation to a debt owing to a person who has acquired movable or immovable property subject to a right of redemption, but in that event the concurrence of the secured creditor or such person, shall be required, except in the case of a proposal formulated and confirmed by the Board of Review as hereinafter provided.

8. Whenever a proposal relates to the rights of a secured creditor or of a person who has acquired movable or immovable property subject to a right of redemption, such creditor or person may value his security and shall be entitled to vote only in respect of the balance of his claim after deducting the amount of his valuation; provided, however, that no proposal shall be approved by the court which provides for the payment to such secured creditor or person on account of such security of any amount in excess of his valuation, or for granting to him any new security for an amount in excess of his valuation.

9. Subsections three and five of section sixteen of the *Bankruptcy Act* shall not apply in the case of a proposal for a composition, extension of time or scheme of arrangement made by any farmer.

10. Whenever a proposal has been approved by the court or whenever a proposal has been formulated and confirmed by the Board, as hereinafter provided, the court may order the farmer to execute any mortgage, conveyance or other instrument necessary to give effect to the proposal.

11. (1) On the filing with the Official Receiver of a proposal, no creditor whether secured or unsecured, shall have any remedy against the property or person of the debtor, or shall commence or continue any proceedings under the *Bankruptcy Act*, or any action, execution or other proceedings for the recovery of a debt provable in bankruptcy, or the realization of any security unless with leave of the court and on such terms as the court may impose: Provided, however, that the stay of proceedings herein provided shall not be effective for more than ninety days from the date of filing of the proposal with the Official Receiver, unless the court makes one or more orders extending the time for the purpose of any proceedings in connection with the proposal. 1935, Ch. 20, Am.

(2) On a proposal being filed the property of the debtor shall be deemed to be under the authority of the court pending the final disposition of any proceedings in connection with the proposal and the court may make such order as it deems necessary for the preservation of such property.

PROVINCIAL BOARDS OF REVIEW.

12.—(1) The Governor in Council may, whenever he considers it expedient, establish in any province a Board of Review which shall exercise in such province the jurisdiction hereinafter provided.

(2) A Board shall consist of a Chief Commissioner and two Commissioners who shall be appointed by the Governor in Council and shall hold office during pleasure and shall receive such remuneration as the Governor in Council may provide.

(3) The Chief Commissioner shall be a judge of the court of the province invested with original or appellate jurisdiction in bankruptcy by the *Bankruptcy Act*, and one Commissioner shall be appointed as a representative of creditors and one Commissioner shall be appointed as a representative of debtors. In the event of any Commissioner other than the Chief Commissioner being unable to hear and deal with any case for any reason considered sufficient by the remaining Commissioners, then the remaining Commissioners shall name an *ad hoc* Commissioner to hear and deal with such case with all the powers of the Commissioner whose place he takes. In the event of the Chief Commissioner being unable to hear and deal with any case on the request of the other Commissioners the Minister shall name an *ad hoc* Chief Commissioner with all the powers of the Chief Commissioner. 1935, Ch. 20, Am.

(4) In any case where the Official Receiver reports that a farmer has made a proposal but that no proposal has been approved by the creditors, the Board shall, on the written request of a creditor or of the debtor, endeavour to formulate an acceptable proposal to be submitted to the creditors and the debtor, and the Board shall consider representations on the part of those interested.

(5) If any such proposal formulated by the Board is approved by the creditors and the debtor, it shall be filed in the court and shall be binding on the debtor and all the creditors.

(6) If the creditors or the debtor decline to approve the proposal so formulated, the Board may nevertheless confirm such proposal, either as formulated or as amended by the Board, in which case it shall be filed in the Court and shall be binding upon all the creditors and the debtor as in the case of a proposal duly accepted by the creditors and approved by the Court. 1935, Ch. 20, Am.

(7) Every request to formulate a proposal shall be dealt with by the full Board, but a determination of the majority shall be deemed to be the determination of the Board: Provided that the Board may direct any one or more of its members on its behalf to inspect and investigate any or all circumstances of any request for review and report to the Board. 1935, Ch. 20, Am.

(8) The Board shall base its proposal upon the present and prospective capability of the debtor to perform the obligations prescribed and the productive value of the farm.

(9) The Board may decline to formulate a proposal in any case where it does not consider that it can do so in fairness and justice to the debtor or the creditors.

(10) For the purposes of the performance of its duties and functions hereunder a Board shall have the powers of a Commissioner appointed under the *Inquiries Act*.

(11) Notwithstanding anything contained in the *Bankruptcy Act*, an insolvent debtor resident in the Province of Quebec, engaged solely in farming or the tilling of the soil, whose liabilities to creditors provable as debts under the *Bankruptcy Act* exceed five hundred dollars, may make an assignment for the general benefit of his creditors in any case where the Board declines to formulate a proposal and certifies that in its opinion the debtors' affairs can best be administered under the *Bankruptcy Act*. 1935, Ch. 20, Am.

In a general sense, insolvency means inability to meet one's debts or obligations; in a technical sense, it means the condition or standard of inability to meet debts or obligations, upon the occurrence of which the statutory law enables a creditor to intervene, with the assistance of a Court, to stop individual action by creditors and to secure administration of the debtor's assets in the general interest of creditors; the law also generally allows the debtor to apply

for the same administration. The justification for such proceeding by a creditor generally consists in an act of bankruptcy by the debtor, the conditions of which are defined and prescribed by the statute law. In a normal community it is certain that these conditions will require revision from time to time by the legislature; as also the classes in the community to which the bankruptcy laws are to apply may require reconsideration from time to time. Their Lordships are unable to hold that the statutory conditions of insolvency which enabled a creditor or the debtor to invoke the aid of the bankruptcy laws, or the classes to which these laws applied, were intended to be stereotyped under head 21 of section 91 of the British North America Act so as to confine the jurisdiction of the Parliament of Canada to the legislative provisions then existing as regards these matters.

Further, it cannot be maintained that legislative provision as to compositions, by which bankruptcy is avoided, but which assumes insolvency, is not properly within the sphere of bankruptcy legislation. (*In re Companies' Creditors Arrangement Act*, (1934) S.C.R. 659.)

It will be seen from the sections above quoted, that the Act here in question relates only to a farmer who is unable to meet his liabilities as they become due, and enables him to make a proposal for a composition, extension of time or scheme of arrangement either before or after an assignment has been made, for which a precedent existed in the Canadian Bankruptcy Act of 1919. As defined in section 2, an assignment means an assignment made under the Bankruptcy Act by a farmer. If the creditors fail to approve of the farmer's proposal, the Board of Review, on the written request of a creditor or the debtor, is to endeavour to formulate "an acceptable proposal" for submission to the creditors and the debtor; if the creditors or the debtor decline to approve the Board's proposal, the Board may nevertheless confirm their proposal, and it is to bind the creditors and the debtor.

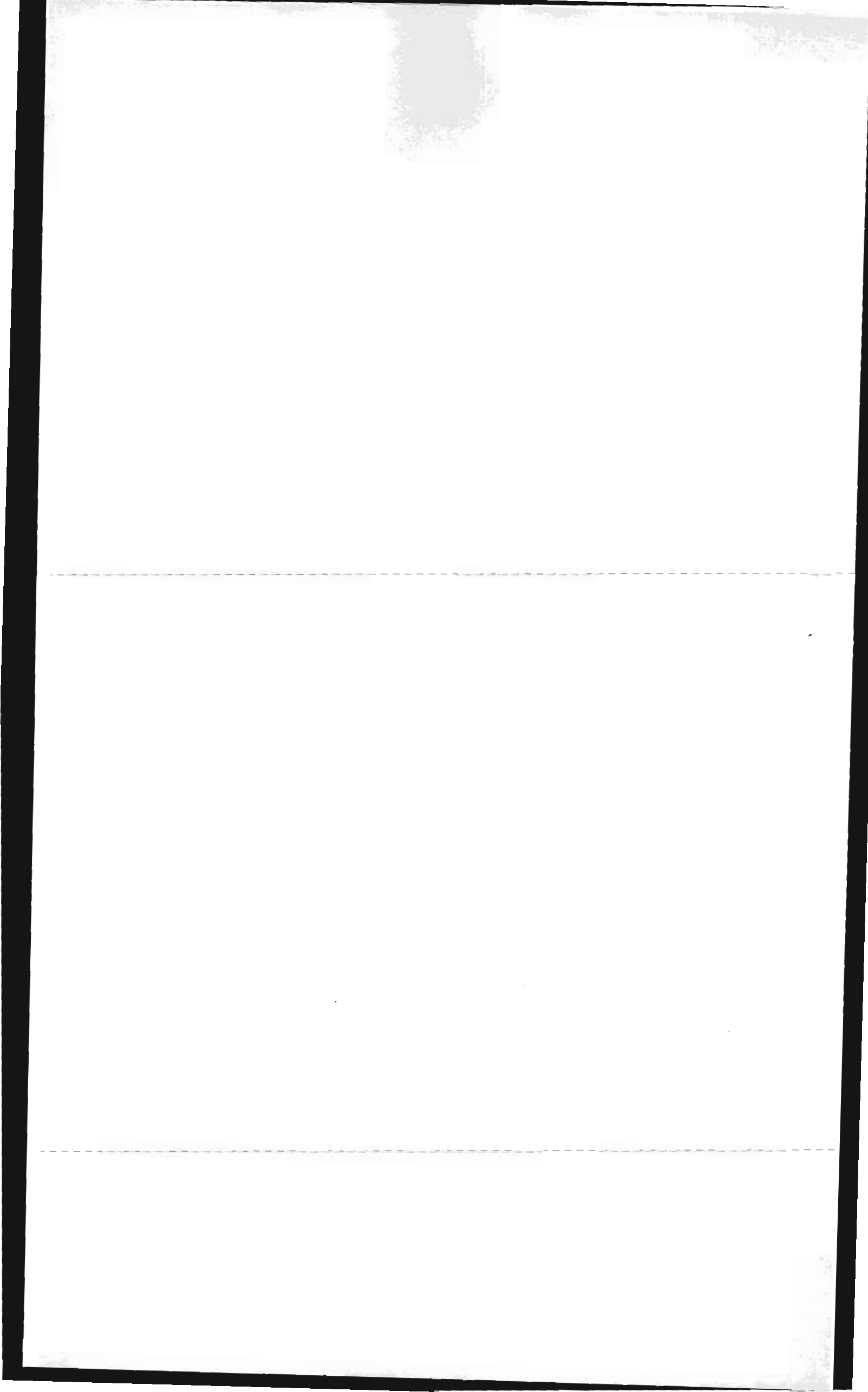
Subject to the contention by the appellant, now to be dealt with, their Lordships are of opinion that these provisions fall within head 21 of section 91 of the British North America Act.

The appellant maintains that the real object of these provisions is to keep the farmers on the land for the benefit of agricultural production, and that this object is to be attained by the operations of the Board of Review, who have power to sacrifice the interests of the creditors for the benefit of the debtor farmer; he further maintains that under section 7 the secured creditor may be deprived of that which is his property.

To deal first with the last contention, their Lordships are clearly of opinion that section 7 does not enable any creditor to be deprived of his security, but does enable the proposal for composition to provide for the reduction of the debt itself or an extension of time for its payment, which is a familiar feature of compositions.

The appellant laid stress on the provisions of subsection 8 of section 12, but that does not appear to their Lordships to be an illegitimate or unusual element to be taken into account in the consideration of composition schemes, and indeed the retention of the business under the management of the debtor may well be a consideration in the interests of the creditors as well as of the debtor. Its fair application appears to be well secured by the provisions of subsections 3, 4 and 9. A judicial Chief Commissioner is provided for under subsection 3; under subsection 4 the Board's proposal is to be designed as an acceptable one to both parties, and this element is emphasised by subsection 9. Their Lordships are unable to accept the contention that the Act is not genuine legislation relating to bankruptcy and insolvency.

Accordingly, the appeal fails, and their Lordships will humbly advise His Majesty that the appeal should be dismissed without costs and that the opinion of the majority of the Supreme Court should be affirmed.



In the Privy Council

THE ATTORNEY-GENERAL OF BRITISH
COLUMBIA

v.

THE ATTORNEY-GENERAL OF CANADA
AND OTHERS

DELIVERED BY LORD THANKERTON

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