

No.  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

IN THE MATTER OF THE *JUDICIAL REVIEW PROCEDURE ACT*, R.S.B.C. 1996, C. 241,  
AND THE *RECALL AND INITIATIVE ACT*, R.S.B.C. 1996, C. 398,

AND IN THE MATTER OF THE FEBRUARY 4, 2010 DECISION OF THE CHIEF  
ELECTORAL OFFICER TO APPROVE APPLICATION FOR  
INITIATIVE PETITION IP-2010-002 –  
“*AN INITIATIVE TO SET ASIDE THE HARMONIZED SALES TAX (HST)*”

BETWEEN:

**JOHN ALLAN (on behalf of Council of Forest Industries),  
PIERRE GRATTON (on behalf of the Mining Association of British Columbia),  
PHILIP HOCHSTEIN (on behalf of Independent Contractors and Businesses Association),  
W.C. (WAYNE) HOSKINS (on behalf of Western Convenience Stores Association),  
RICK JEFFERY (on behalf of Coast Forest Products Association),  
and JOHN R. WINTER (on behalf of B.C. Chamber of Commerce)**

PETITIONERS

AND:

**THE CHIEF ELECTORAL OFFICER,  
and WILLIAM VANDER ZALM**

RESPONDENTS

**PETITION TO THE COURT**

THIS IS THE PETITION OF:

**JOHN ALLAN**  
President & C.E.O., Council of Forest Industries  
c/o 2200 – 1055 West Hastings Street  
Vancouver, British Columbia  
V6E 2E9

**PIERRE GRATTON**

President & C.E.O., Mining Association of British Columbia  
c/o 2200 – 1055 West Hastings Street  
Vancouver, British Columbia  
V6E 2E9

**PHILIP HOCHSTEIN**

President, Independent Contractors and Businesses Association  
c/o 2200 – 1055 West Hastings Street  
Vancouver, British Columbia  
V6E 2E9

**W.C. (WAYNE) HOSKINS**

President, Western Convenience Stores Association  
c/o 2200 – 1055 West Hastings Street  
Vancouver, British Columbia  
V6E 2E9

**RICK JEFFERY**

President & CEO, Coast Forest Products Association  
c/o 2200 – 1055 West Hastings Street  
Vancouver, British Columbia  
V6E 2E9

**JOHN R. WINTER**

President & CEO, B.C. Chamber of Commerce  
c/o 2200 – 1055 West Hastings Street  
Vancouver, British Columbia  
V6E 2E9

ON NOTICE TO:

**CHIEF ELECTORAL OFFICER**

c/o Elections B.C.  
PO Box 9275 Stn Prov Govt  
Victoria, British Columbia  
V8W 9J6

**WILLIAM VANDER ZALM**

3553 Arthur Drive  
Ladner, British Columbia  
V4K 3N2

NOTICE AS REQUIRED BY s. 16 of the *Judicial Review Procedure Act*:

**MINISTRY OF ATTORNEY GENERAL**

Legal Services Branch  
PO Box 9280 Stn Prov Govt  
Victoria, British Columbia  
V8W 9J7

Let all persons whose interests may be affected by the order sought TAKE NOTICE that the Petitioner applies to court for the relief set out in this petition.

IF YOU WISH TO BE HEARD at the hearing of this petition or wish to be notified of any further proceedings, YOU MUST GIVE NOTICE of your intention by filing a form entitled "Appearance" at the Registry within the Time for Appearance and YOU MUST ALSO DELIVER a copy of the "Appearance" to the Petitioner's address for delivery, which is set out in this petition.

YOU OR YOUR SOLICITOR may file the "Appearance". You may obtain a form of "Appearance" at the Registry.

IF YOU FAIL to file the "Appearance" within the proper Time for Appearance, the Petitioner may continue this application without further notice.

Where this Petition is served on a person in British Columbia, the time for appearance by that person is 7 days from the service (not including the day of service).

Where this Petition is served on a person outside British Columbia, the time for appearance by that person after service, shall be 21 days in the case of a person residing anywhere within Canada, 28 days in the case of a person residing in the United States of America, and 42 days in the case of a person residing elsewhere. The Court may shorten the time for appearance on *ex parte* application.

**TIME FOR RESPONSE**

IF YOU WISH TO RESPOND to the application, you must, on or before the 8<sup>th</sup> day after you have entered an appearance,

- (a) deliver to the Petitioner
  - (i) 2 copies of a response in Form 124, and
  - (ii) 2 copies of each affidavit on which you intend to rely at the hearing, and
- (b) deliver to every other party of record
  - (i) one copy of a response in Form 124, and
  - (ii) one copy of each affidavit on which you intend to rely at the hearing

(1) The Address of the Registry is:

The Law Courts  
800 Smithe Street  
Vancouver, British Columbia  
V6Z 2E1

(2) The ADDRESS FOR DELIVERY and Name and Address of the Petitioner's Solicitor are:

Heenan Blaikie LLP  
Barristers and Solicitors  
2200 - 1055 West Hastings Street  
Vancouver, B.C., V6E 2E9

Attention: Peter A. Gall, Q.C.

Facsimile Number for Delivery: (604) 669-5101

The Petitioners apply to this court for the following orders and declarations:

1. An order quashing the decision of the Chief Electoral Officer, rendered on February 4, 2010, to approve the application for initiative petition *IP-2010-002 – “An initiative to end the harmonized sales tax (HST)”*;
2. An order setting aside initiative petition *IP-2010-002 – “An initiative to end the harmonized sales tax (HST)”* and a declaration that it is null and void; and
3. Such other orders as may be appropriate.

The Petitioners will rely on the Part 2 of the *Recall and Initiative Act*, R.S.B.C. 1996, c. 398; the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241; and Rules 10, 57 and others of the *Supreme Court Rules*;

## **FACTS**

The facts upon which this petition is based are as follows:

### ***The HST in British Columbia***

1. On November 27, 2009, the Governments of British Columbia and Canada entered into the *Comprehensive Integrated Tax Coordination Agreement* (the “Agreement”).
2. The Agreement calls on the Government of Canada to “make best efforts to introduce...the necessary legislative amendments to give effect to the Agreement,” and on both

Governments to “work collaboratively and in a timely manner towards the imposition of the [Harmonized Sales Tax in British Columbia].”

3. Both parties entered into the Agreement pursuant to delegated legislative authority.
4. The Government of Canada entered into the Agreement pursuant to its powers under Part III.1 of the *Federal-Provincial Fiscal Arrangements Act*, R.S.C. 1985, c. F-8 – namely, to enter into an agreement with a provincial government respecting “the integration of sales taxes applicable in the province into taxes collected, administered, and enforced under a Single Act of Parliament.”
5. The Government of British Columbia entered into the Agreement pursuant to its powers under Section 4 of the *Ministry of Intergovernmental Relations Act*, R.S.B.C. 1996, c. 303, authorizing the Government of British Columbia to “enter into agreements with the government of Canada, the government of a province or an agent of the government of Canada or a province.”
6. In satisfaction of its obligations under the Agreement, the Government of Canada introduced, on December 15, 2009, the *Provincial Choice Tax Framework Act*, amending the federal *Excise Tax Act*, R.S. 1985, c. E-15, to “implement, effective July 1, 2010, the new fully harmonized value-added tax framework in Ontario and British Columbia.”
7. These federal legislative amendments to the *Excise Tax Act* established the HST in British Columbia, effective July 1, 2010.
8. In satisfaction of its commitments under the Agreement, the Government of British Columbia introduced, on March 30, 2010, the *Consumption Rebate and Transition Act*, S.B.C. 2010, c. 5, which repealed the existing provincial sales tax (the “PST”), established under the provincial *Social Service Tax Act*, R.S.B.C. 1996, c. 431. The *Consumption Rebate and Transition Act* also made adjustments to British Columbia’s hotel room tax, established under the provincial *Hotel Room Tax Act*, R.S.B.C. 1996, c. 207 and provided transitional provisions to coordinate the implementation of the HST.

#### ***British Columbia’s Recall and Initiative Act***

9. Part 2 of the *Recall and Initiative Act*, R.S.B.C. 1996, c. 398 (the “*RIA*”) provides registered voters in British Columbia with the right to apply to the Chief Electoral Officer for the issuance of an initiative petition.
10. The initiative petition process permits the registered voters of British Columbia to introduce specific legislation into the Legislature for the purpose of having it becoming a statute of British Columbia.
11. The *RIA* requires that any application to the Chief Electoral Officer for the approval of a petition be accompanied by a draft of the actual legislation to be introduced.

12. An initiative petition's draft bill must "be drafted in a clear and unambiguous manner" and must be confined to matters within the jurisdiction of the Legislature. The Chief Electoral Officer has issued guidelines on the required form of initiative petitions. The guidelines state that "[t]he draft bill must be in a suitable form to be introduced to the Legislative Assembly".
13. The Chief Electoral Officer can only approve an application for an initiative petition if he is satisfied that the draft bill complies with the requirements of the *RIA* that the draft bill fall within the competence of the Legislature and is clear and unambiguous.
14. Sixty (60) days after the Chief Electoral Officer approves an application in principle, the initiative petition is formally issued, at which point proponents of the petition have a ninety (90) day period in which to gather the signatures of ten percent (10%) of registered voters in each of British Columbia's electoral districts.
15. If petitioners are successful in meeting the ten percent (10%) threshold in each electoral district, the petition is forwarded to a select standing committee. The committee in turn recommends either that the draft bill be introduced into the legislature at the earliest practicable opportunity, or that the petition be referred back to the Chief Electoral Officer, who in turn puts the draft bill to a province-wide referendum. The result of a successful referendum is that the draft bill is introduced into the legislature at the earliest practicable opportunity.

***The Anti-HST Initiative and the HST Extinguishment Act***

16. On December 24, 2009, William Vander Zalm submitted an application for an initiative petition to the Chief Electoral Officer. This petition, entitled "An initiative to end the harmonized sales tax (HST)" (the "Initiative Petition"), was assigned the event number IP-2010-002.
17. As required by the *RIA*, Vander Zalm's application included, amongst other things, draft legislation entitled the "HST Extinguishment Act" (the "Extinguishment Act"). The Extinguishment Act provides:

*Preamble*

Whereas a Harmonized Sales Tax (HST) combining the Provincial Sales Tax (PST) with the federal Goods and Services Tax (GST) as contemplated by the Governments of British Columbia and Canada contravenes Section 92, Article 2, of the Constitution Act 1867, which states:

*92. In each of Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,*

*2. Direct Taxation within the Province in order to the raising of a Revenue for Provincial Purposes*

And whereas the people of British Columbia, as expressed in the Citizen Initiative Petition against the Harmonized Sales Tax (HST) in British Columbia, wish to extinguish the tax, therefore;

*Part I*

- (1) The Agreement titled "*The Comprehensive Integrated Tax Coordination Agreement*" between The Government of British Columbia and The Government of Canada establishing an HST in British Columbia is hereby extinguished and of no force or effect whatsoever.
- (2) For greater clarity, the HST is hereby extinguished in British Columbia.

*Part II*

- (1) A Provincial Sales Tax (PST) of 7% with the same applications and exemptions as at June 30<sup>th</sup> 2010 shall be reinstated as the only sales tax in British Columbia for the raising of a Revenue for Provincial Purposes.

*Part III*

- (1) This Act shall be effective retroactively as of June 30<sup>th</sup> 2010.
- (2) Any HST revenues owing to or received by the Provincial Government between the retroactive effective date of this Act and the actual date of Royal Assent, which are over and above the original PST amount as it would previously have been applied, shall be reimbursed to all British Columbians on a per capita basis.

18. On February 4, 2010, the Chief Electoral Officer issued the decision granting approval in principle to Vander Zalm's application.
19. On April 6, 2010, the Chief Electoral Officer officially issued the approved Initiative Petition to Vander Zalm, triggering the ninety (90) day statutory period in which canvassers can solicit signatures for the Initiative Petition. This period ends on July 5, 2010.
20. The Extinguishment Act does not comply with the requirements of the *RIA*. The proposed legislation does not satisfy the requirement that it be clear and unambiguous and fall within

the legislative competence of the Legislature. Accordingly, the decision of the Chief Electoral Officer to approve the Initiative Petition and the draft bill is contrary to the requirements of the *RIA* and constitutes both an error of law and a jurisdictional error.

### **BASIS FOR SEEKING RELIEF**

21. The Chief Electoral Officer erred in law and exceeded his jurisdiction in holding that Vander Zalm's application for the Initiative Petition satisfied the *RIA*'s requirements that (i) the draft bill be made with respect to a matter within the jurisdiction of the legislature, and (ii) the draft bill be drafted in a clear and unambiguous manner.
22. The draft bill is not within the competence of the Legislature in that it:
  - a. purports to "extinguish" federal legislation within the exclusive jurisdiction of the Parliament of Canada, namely portions of the *Excise Tax Act*, R.S. 1985, c. E-15; and
  - b. purports to extinguish unilaterally the "Comprehensive Integrated Tax Coordination Agreement" between the Government of British Columbia and the Government of Canada establishing an HST in British Columbia, including the rights and obligations of the Government of Canada under that agreement.
23. The draft bill is not clear and unambiguous in that it:
  - a. does not clearly and unambiguously specify whether its effect is to extinguish the "Comprehensive Integrated Tax Coordination Agreement," the HST itself, or both;
  - b. does not clearly and unambiguously specify the provincial sales taxes that it purports to introduce following the "extinguishment" of the HST;
  - c. does not clearly and unambiguously provide a mechanism for the retroactive reimbursement of taxes collected through the HST under the jurisdiction of the federal Parliament; and
  - d. contains a preamble which misstates the constitutional law of Canada by saying that the HST "contravenes Section 92, Article 2, of the Constitution Act of 1867." The inaccurate preamble purports to explain and justify the draft bill and the extinguishment of the HST.

The Petitioners estimate that the application will take 1 day.

Dated this 28th day of June, 2010.

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Peter A. Gall, Q.C.  
Solicitor for the Petitioner

This **Petition** is filed by Peter A. Gall, Q.C., of the law firm of Heenan Blaikie LLP, 2200 – 1055 West Hastings Street, Vancouver, British Columbia, V6E 2E9. Telephone: (604) 669-0011. Facsimile: (604) 669-5101.

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