

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

THE CORPORATION OF THE CANADIAN CIVIL LIBERTIES ASSOCIATION

Plaintiff (Moving Party)

and

THE ATTORNEY GENERAL OF ONTARIO

Defendant (Responding Party)

**FACTUM OF THE MOVING PARTY,
THE PLAINTIFF**

May 14, 2020

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Court File No. 19-00626-685-0000

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PART I - OVERVIEW

1. Can the Ontario government use the threat of legislative fines to compel citizens – corporate or otherwise – to promulgate its political messages? In this motion, the plaintiff (the “**CCLA**”) submits that the answer is “no”, and accordingly seeks a declaration that sections 2, 4 and 5 of the *Federal Carbon Tax Transparency Act* (the “**Sticker Act**”)¹ violate section 2(b) of the *Canadian Charter of Rights and Freedoms* (the “**Charter**”),² and are therefore invalid and without effect.

¹ 2019, S.O. 2019, c. 7, Sched. 23.

² Part I of the *Constitution Act*, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11.

2. The Ontario Progressive Conservative Party is the governing party in Ontario. It strongly opposes the federal *Greenhouse Gas Pollution Pricing Act* (the “**GGPPA**”), which was passed by the Liberal federal government. The *GGPPA* is one of the initiatives the federal government has implemented to fight climate change. In essence, it places a charge on carbon pollution. This charge is called a “fuel charge” in the *GGPPA*, but the defendant (“**Ontario**”) refers to it as a “carbon tax”. The *GGPPA* allows provinces to set up their own carbon-pricing system. Provinces whose carbon-pricing systems don’t meet federal criteria are subject to the carbon-pricing system imposed by the *GGPPA*.

3. After the Ontario Progressive Conservative Party won the 2018 provincial election, it took square aim at the *GGPPA* as a political issue – claiming that it had a better plan to fight climate change than what was being imposed by the federal Liberals. Ontario then budgeted \$30 million to fund a two-prong attack on the *GGPPA*, consisting of: (a) a court application effectively challenging the constitutional validity of the *GGPPA*, and (b) a multimedia advertising campaign that portrayed the fuel charge under the *GGPPA* as a costly and inefficient “carbon tax” that would cost Ontarians five cents for every litre of gas purchased.³

4. The CCLA asserts that the primary purpose of the government’s multimedia campaign was to convince Ontario voters that Prime Minister Trudeau’s “carbon tax” was a bad idea, and to persuade them to vote for the Conservative Party of Canada in the then-upcoming federal election.

5. Ontario’s political campaign against the *GGPPA* and the federal Liberals did not stop with the multimedia campaign. Ontario also passed the *Sticker Act* as part of its quest to persuade

³ See Affidavit of Cara Faith Zwibel, Affirmed September 3, 2019, para 10, and references therein (“**Zwibel Affidavit**”).

voters to vote against the federal Liberals, and has subsequently used it as part of its attempt to persuade voters that the *GGPPA* is bad Liberal policy and bad for consumers.

6. The *Sticker Act* prescribes a sticker that repeats Ontario's criticism of the federal fuel charge as a costly "carbon tax". Under this legislation, gas stations across the province are required to affix Ontario's anti carbon-tax sticker on almost every gasoline pump in the province. The legislation provides for significant monetary fines on any gas station owner that does not fully comply with the sticker requirement.

7. An examination of what the sticker states (and doesn't state) and the context in which it was first conceived and legislated, reveals its obvious political purpose.

8. The CCLA takes no position on efficacy or advisability of the fuel charge, or on any of the climate action policies being proposed by Ontario, or by the federal government. This proceeding has been brought solely to challenge the legality of the legislatively-compelled stickers, on the basis that they constitute unlawful, compelled, political speech.

9. The CCLA and Ontario are jointly asking the Court to dispose of this action summarily pursuant to Rule 20 of Ontario's *Rules of Civil Procedure*. Neither asserts that a full trial is necessary to resolve the constitutional question concerning the validity of the *Sticker Act*.

PART II - FACTS

A. The Parties

10. The CCLA, founded in 1964, is a national, independent, non-profit, and non-governmental organization dedicated to the furtherance of civil liberties in Canada.⁴ The CCLA receives no

⁴ Zwibel Affidavit, para 3. The Corporation of the CCLA is a non-profit corporation established pursuant to the laws of Canada; its objects are identical to those of the CCLA.

funding from either the federal or any provincial government.⁵ The CCLA has been granted leave to intervene in many of the leading freedom of expression cases at the Supreme Court of Canada. Recently the CCLA has been a public interest litigant in constitutional challenges to solitary confinement in prisons, and the sex education curriculum in Ontario.⁶

11. The Proposed Intervenor, PEN Canada, is the Canadian chapter of PEN International. It is a nonpartisan organization that works with others to defend freedom of expression as a basic human right, in Canada and internationally.

12. In this proceeding, the Attorney General of Ontario is the legal representative of the Ontario government and the Minister of Energy, Northern Development and Mines, which is responsible for administering and enforcing the *Sticker Act*.

B. The GGPPA and the Federal Rebate

13. The GGPPA received Royal Assent on June 21, 2018.⁷ The GGPPA has two key parts: Part I, administered by the Canada Revenue Agency, applies a charge to 21 types of fuel and combustible waste; Part II, administered by Environment and Climate Change Canada, introduces an output-based pricing system for large industrial emitters.⁸ Provinces and territories are permitted to create their own system of carbon pricing based on the needs and requirements of their own jurisdictions.⁹ In the absence of a provincial system, or in provinces and territories whose carbon pricing system does not meet federal requirements, a fuel charge is implemented by the federal GGPPA.¹⁰

⁵ Zwibel Affidavit, para 3.

⁶ Zwibel Affidavit, para 6.

⁷ S.C. 2018, c. 12, section 186.

⁸ GGPPA, Part 1 – Fuel Charge, Part 2 – Industrial Greenhouse Gas Emissions.

⁹ GGPPA, Preamble.

¹⁰ GGPPA, Preamble.

14. As stated in its preamble, the purpose of the *GGPPA* is to create financial incentives for the behavioural changes and innovations that are required in order to reduce greenhouse gas emissions in Canada. In provinces where the fuel charge imposed pursuant to the *GGPPA* applies, the Federal Minister of Finance returns the bulk of the proceeds from the fee directly to residents in the province of origin, in the form of Climate Action Incentive Payments (“**Federal Rebate**”).¹¹ According to the federal government, the remaining proceeds from fuel charges which are not returned to residents through Federal Rebates are returned to the province of origin via support to schools, hospitals, small and medium-sized businesses, colleges and universities, municipalities, not-for-profit organizations, and Indigenous communities.¹²

15. As a result of recent legislative changes made by the provincial Conservative party, Ontario is now one of the provinces where the federal fuel charge applies.¹³ The rate charged on gasoline began at about 4.4 cents per litre effective April 2019, and was scheduled to rise to about 6.6 cents per litre in April of 2020, 8.8 cents per litre in April of 2021, and 11.1 cents per litre in April of 2022.¹⁴

C. Ontario’s Legal Challenges to the *GGPPA*

16. Ontario brought a court proceeding to determine the constitutional validity of the *GGPPA* in the Ontario Court of Appeal, arguing that the regulation of greenhouse gas emissions is *ultra vires* the federal legislature, and that the fuel charge it imposes is thus an illegal tax.¹⁵ The majority

¹¹ *GGPPA*, ss. 165(2) and 188(1); *Budget Implementation Act, 2018, No 2*, SC 2018, c 27, section 13.

¹² *Ibid.*

¹³ Zwibel Affidavit, para 7

¹⁴ Affidavit of Dr. Benjamin Zycher, sworn November 22, 2019, para 11 (“**Zycher Affidavit**”).

¹⁵ In the Matter of a Reference to the Court of Appeal pursuant to section 8 of the *Courts of Justice Act*, RSO 1990, c. C.34, by Order-in-Council 1014/2018 respecting the constitutionality of the *Greenhouse Gas Pollution Pricing Act*, Part 5 of the *Budget Implementation Act, 2018, No. 1*, SC 2018, c. 12 (the “**Ontario GGPPA Reference**”), Factum of the Attorney General of Ontario, para 90.

of the Ontario Court of Appeal rejected Ontario's argument in a decision released on June 28, 2019, finding that the greenhouse gas emissions charges under the *GGPPA* are not a tax.¹⁶ Ontario's legal position has also been rejected by the Court of Appeal of Saskatchewan, but accepted by the Court of Appeal in Alberta. The Supreme Court of Canada was scheduled to consider the matter on March 24 and 25, 2020, but the hearing has been tentatively rescheduled to September 2020.

D. Ontario's Political Advertising

17. In tandem with its court challenge, Ontario also challenged the *GGPPA* in the court of public opinion. For example, in May 2019, Ontario launched its \$4 million, multimedia "One Little Nickel" campaign. The campaign targeted the fuel charge and clearly promulgated Ontario's political view that the fuel charge is bad for consumers.¹⁷ The campaign included radio, digital, and television advertisements in 22 languages. In the campaign, Ontario argues that consumers will be paying a nickel more per litre of fuel because the "Federal Government is charging you a carbon tax": hence the name "One Little Nickel".¹⁸ The television advertisement which formed part of Ontario's multimedia advertising campaign can be viewed on Premier Ford's Twitter page:

<https://twitter.com/i/status/1127920394969800705>

¹⁶ *Reference re Greenhouse Gas Pollution Pricing Act*, 2019 ONCA 544, at para 163.

¹⁷ Ontario's Response to the CCLA's Request to Admit of January 9, 2020 ("**Response to Request to Admit**").

¹⁸ Office of the Auditor General of Ontario, *Annual Report 2019, Volume 1*, p. 737, ("**Annual Report**"), Exhibit "C" to the Reply Affidavit of Cara Faith Zwibel, Affirmed December 19, 2019 ("**Zwibel Reply**"). The television advertisement which formed part of Ontario's multimedia advertising campaign can be viewed on Premier Ford's Twitter page: <https://twitter.com/i/status/1127920394969800705>.

18. In its Annual Report, the Auditor General of Ontario specifically singled out and took issue with the One Little Nickel campaign.¹⁹ The Auditor General Report concluded that:²⁰

...a primary objective of the campaign was to foster a negative impression of the federal government and its carbon pricing policy. We also believed that it aimed to foster a positive impression of the provincial governing party by saying that Ontario has a “better” plan for the environment.

19. Several editorials published in the Canadian media saw the sticker as part of Ontario’s advertising campaign against the federal Liberal party.²¹

E. The Sticker Act

20. In its 2019 Budget released on April 11, 2019, Ontario announced the *Sticker Act*. Pursuant to the Act, gas station owners would be required to display a sticker on gasoline pumps that called the federal fuel charge “The Federal Carbon Tax”, and told consumers that because of the fuel charge, they would pay an additional 4.4 cents/litre every time they fueled up, and would pay even more over time. Ultimately, the sticker included at **Appendix “A”** was prescribed by the regulation under the *Sticker Act*.²²

21. The sticker singles out the immediate cost of the fuel charge, but omits other information. For example: (a) it does not explain that Federal Rebates are provided to Ontarians to counterbalance the cost of the fuel charge, (b) it singles out the impact of the fuel charge on the price of gas, without explaining that the fuel charge accounts for 3.5% of the price of gas, whereas other federal *and provincial* taxes make up 30.2% of the price being charged at the pumps for gas

¹⁹ Annual Report, p. 737.

²⁰ Annual Report, p. 737.

²¹ Shawn Jeffords “Ontario government says it won’t scrap anti-carbon tax stickers”, The Canadian Press (28 October 2019), attached as Exhibit “B” to the Zwibel Reply; Robert Benzie “Ads target Trudeau’s carbon plan”, Toronto Star (17 April 2019), attached as Exhibit “2” to the Zwibel Affidavit.

²² O. Reg. 275/19 under the Sticker Act came into force on August 30, 2019. The sticker is also attached as Schedule “A” to the Zwibel Affidavit.

and diesel, and (c) it says nothing about the general price consumers will pay for *inaction* on climate change.²³ The sticker also refers to the fuel charge as a “tax” - a description that was specifically rejected by a majority of the Ontario Court of Appeal on June 18, 2019, more than 60 days before the regulation that prescribes the contents of the sticker was adopted.

22. Section 2(1) of the *Sticker Act* requires gas retailers to obtain copies of the prescribed sticker and to ensure the sticker is affixed to each gasoline pump in a prescribed manner. Section 4(1) of the *Sticker Act* sets out the penalties for failure to comply with its requirements, providing for individual fines of up to \$500 per day for a first offence and up to \$1,000 per day thereafter. For corporations, it sets out fines of up to \$5,000 for a first offence and up to \$10,000 per day thereafter.

F. The Sticker’s Political Purpose

23. The *Sticker Act* received Royal Assent on May 29, 2019, but the requirement to affix the stickers only commenced on August 30, 2019 — less than two months before the federal election on October 21, 2019.²⁴ The timing of this requirement is important: a key issue in the federal election was climate change, as the federal Conservatives and the federal Liberals had different approaches on how to address it.²⁵

24. As reported in the media, based on the federal Conservative Party of Canada’s campaign it was anticipated that if elected they would have eliminated the federal fuel charge.²⁶ For example, a *Globe and Mail* article about issues in the federal election stated that “Leader Andrew Scheer opposes the carbon-pricing system, vowing that his party would repeal it and instead use tax

²³ As set out in the draft alternative sticker presented by the Canadian Independent Petroleum Marketers Association, discussed below (Response to Request to Admit).

²⁴ O. Reg. 275/19 under the *Sticker Act* came into force on August 30, 2019. Zwibel Reply, para 6.

²⁵ Zwibel Reply, para 6.

²⁶ Zwibel Reply, para 6.

incentives, levies on large industrial polluters and spending on carbon-capture technology.²⁷ In August of 2019, Premier Doug Ford expressed his view that the carbon tax was a campaign issue that voters would be voting on in the federal election, stating that voters would determine the fate of Ontario's legal challenge to the "carbon tax" in the federal election.²⁸

25. As is clear from various public statements made by members of the Ontario government in support of the *Sticker Act* between April 8 – 18, 2019, the federal fuel charge was staked as a political battleground: "People in our province have to know how the federal government is gouging them on the worst single tax you could ever put on the backs of people, the backs of businesses" – Premier Doug Ford.²⁹

26. The *Sticker Act's* political purpose is further demonstrated by comments Ontario's representatives made in the Legislative Assembly when the proposed *Sticker Act* was discussed. On April 16, 2019 Minister Rickford stated: "We're going to stick it to the Liberals and remind the people of Ontario how much this job-killing, regressive carbon tax costs..."³⁰

27. On April 17, 2019, the *Sticker Act* was discussed in the Legislative Assembly of Ontario. This discussion was published in Hansard under the heading "Government Advertising." Minister Rickford stated: "We're fighting this job-killing, regressive carbon tax. At every opportunity we are going to let the people of Ontario know where it hurts the most, when they're fueling up their

²⁷ Globe Staff "Federal election 2019: The definitive guide to the issues and party platforms", *The Globe and Mail* (15 October 2019), attached as Exhibit B to the Zwibel Reply.

²⁸ Shawn Jeffords "Ontario government says it won't scrap anti-carbon tax stickers", *The Canadian Press* (28 October 2019), attached as Exhibit "B" to the Zwibel Reply. Then, following the Liberal Party of Canada's re-election, the Progressive Conservative Party of Ontario stated that it would proceed with the challenge of the Carbon Tax at the Supreme Court of Canada (Zwibel Reply, para 7).

²⁹ Response to Request to Admit and para 20 of Zwibel Affidavit; See also para 20 of Zwibel Affidavit regarding other, similar comments from Premier Ford, Minister Greg Rickford and Minister Victor Fedeli.

³⁰ Legislative Assembly of Ontario, Official Report of Debates (Hansard) No. 94, 1st Session, 42nd Parliament, Tuesday 16 April 2019, pp. 4397-4398, Exhibit "A" to the Zwibel Reply.

automobiles ... that this is costing them and the people of Ontario too much and we won't have anything to do with it."³¹

G. The CCLA's Response to the *Sticker Act*

28. On April 29, 2019, shortly after the *Sticker Act* was first announced in Ontario's 2019 Budget, the CCLA's counsel delivered a demand letter to Ontario, putting it on notice that the proposed sticker was compelled political speech, would be an unreasonable violation of section 2(b) of the *Charter*, and that the CCLA would immediately commence a *Charter* challenge in the event that the proposed legislation became law.³² On May 7, 2019, CCLA's Executive Director attended in the Ontario Legislature before the government committee considering adoption of the *Sticker Act*, and provided it with the CCLA's position that the *Sticker Act* compelled political speech and, contravened the *Charter*.³³ Bryant stated:

In a nutshell, we would argue that the government is perfectly free, obviously, to undertake its fight against the federal government and fight against the carbon tax. But to play ventriloquist and to ask businesses and citizens to be the dummy to ape the political message of the government or else face a fine of \$10,000 – this is compelled speech and contrary to freedom of expression.

29. On June 7, 2019, Ontario invited comments on the proposed regulations to the *Sticker Act*, without providing the public with a draft of the proposed regulations or the final version of the sticker to review.³⁴ The CCLA provided its comments to Ontario, advising that “requiring, under penalty of significant fines, businesses to affix a sticker setting out Ontario's position on the carbon tax is compelled political speech which contravenes s.2(b) of the [*Charter*].”³⁵ The CCLA

³¹ Legislative Assembly of Ontario, Official Report of Debates (Hansard) No. 95, 1st Session, 42nd Parliament, Wednesday 17 April 2019, p. 4448, Exhibit “1” to the Zwibel Affidavit. The *Sticker Act* was also discussed in the Legislative Assembly of Ontario on April 16, April 18, May 7, and May 15, 2019, and these debates were all published in Hansard under the heading “Government Advertising.”

³² Exhibit “3” to the Zwibel Affidavit.

³³ Exhibit “6” to the Zwibel Affidavit.

³⁴ Exhibit “8” to the Zwibel Affidavit.

³⁵ Zwibel Affidavit, para 28.

recommended that no regulation be adopted, and that the *Act* never be proclaimed into force. Alternatively, if a sticker was to be mandated, the CCLA asked that the sticker proposed by regulation be neutral, which would require both accuracy and completeness.

H. The Public's Response to the *Sticker Act*

30. Other organizations provided Ontario with comments on the proposed regulation and sticker. Ecojustice Canada stated that the sticker design published in the 2019 Ontario Budget would appear to be illegal having regard to the *Charter*, the *Government Advertising Act*, and possibly other enactments.³⁶

31. The Canadian Federation of Independent Business ("**CFIB**") supported the Ontario government's opposition to the federal fuel charge, but found the mandatory stickers to be "a regressive move" at odds with "the Ontario government's recent, successful efforts to reduce red tape and shift enforcement efforts from punishment-based to education-based."³⁷ The CFIB **strongly** recommended that Ontario make the stickers voluntary (emphasis in original).

32. Greenpeace Canada commented that "[f]orcing businesses to post misleading and partisan information is a form of compelled political speech that is unconstitutional under the Canadian Charter of Rights and Freedoms."³⁸ Greenpeace also noted that the information on the proposed sticker was misleading or incorrect, because it did not include the costs of inaction on climate change, it did not include the other federal and provincial taxes applied to gasoline and diesel, and it was inaccurate to call the federal carbon price a "tax", given the Ontario Court of Appeal's ruling on that issue.

³⁶ Response to Request to Admit.

³⁷ Response to Request to Admit.

³⁸ Response to Request to Admit.

33. The Canadian Independent Petroleum Marketers Association (“**CIPMA**”) commented that the penalties in the *Sticker Act* were too high and would be detrimental to the operations of a small business.³⁹ CIPMA also submitted a draft sticker for Ontario’s consideration, which consisted of a pie chart breaking down the entire cost of gasoline for consumers, attached as **Appendix “B”**.⁴⁰ CIPMA’s proposed sticker showed that only 3.5% of the price of gasoline was attributed to the federal fuel charge, and that 30.2% was attributed to federal and provincial taxes.

34. The Ontario Chamber of Commerce wrote to Minister Rickford, requesting that he remove the requirement to post a sticker from the proposed *Sticker Act*.⁴¹ The Chamber of Commerce noted that its members, including gas station operators, had “expressed concerns regarding the political nature of the stickers, viewing them as a violation of their rights and freedoms.”

35. Ontario also received comments from the public about the *Sticker Act*. Some comments were supportive of the *Sticker Act*, but many of the comments concerning the stickers were negative, specifically complaining that taxpayer money was being wasted on the sticker’s enforcement and on the One Little Nickel media campaign.⁴²

I. The CCLA’s Efforts to Locate a Co-Plaintiff

36. The CCLA made efforts to find a gas retailer to act as a co-plaintiff in this matter, but these efforts were not successful.⁴³ When contacted by the CCLA, certain gas retailers expressed uneasiness with litigating against the province, concern that customers who supported Ontario

³⁹ Response to Request to Admit.

⁴⁰ Response to Request to Admit.

⁴¹ Exhibit “7” to the Zwibel Affidavit.

⁴² Response to Request to Admit.

⁴³ Zwibel Affidavit, para 30.

would take issue with the retailer's involvement, or concern that doing so would be contrary to their corporate head office's position.⁴⁴

PART III - STATEMENT OF ISSUES, LAW AND AUTHORITIES

A. Issues

37. This motion raises three main issues: (a) does the *Sticker Act* violate section 2(b) of the *Charter*, (b) Is this violation justified under section 1 of the *Charter*, and (c) Does the CCLA have standing to bring this motion?

38. The CCLA submits that the *Sticker Act* compels political speech and violates section 2(b) of the *Charter*, and that this violation is not justified under section 1 of the *Charter*. The CCLA has standing to challenge the legislation on the basis of *Downtown Eastside Sex Workers United Against Violence Society v Canada (Attorney General)*.⁴⁵

B. Law

Issue 1: The Sticker Act Violates Section 2(b) of the Charter

39. Section 2(b) of the *Charter* states that everyone has the right to freedom of thought, belief, opinion, and expression, including freedom of the press and other media of communication. Freedom of expression also protects the right to say nothing or the right not to say certain things.⁴⁶ Thus, forced or compelled expression can constitute a violation of section 2(b).

40. The approach to analyzing claims under section 2(b) of the *Charter* was set out by the Supreme Court of Canada in *Irwin Toy Ltd. v Quebec*.⁴⁷ This approach applies to claims based

⁴⁴ Zwibel Affidavit, para 30.

⁴⁵ *Downtown Eastside Sex Workers United Against Violence Society v Canada (Attorney General)*, 2012 SCC 45, [Downtown Eastside].

⁴⁶ *Slaight Communications Inc. v Davidson*, [1989] 1 SCR 1038, at para 95 [Slaight Communications].

⁴⁷ *Irwin Toy Ltd. v Quebec (Attorney General)*, [1989] 1 SCR 927 [Irwin Toy].

on expression *compelled* by the government, in addition to claims based on expression *restricted* by the government.⁴⁸ A court must answer the following questions when considering whether legislation contravenes section 2(b):

- a. Does the law compel expression?
- b. Is the purpose of the law aimed at compelling expression? If it is, a finding of a violation of section 2(b) is automatic.
- c. If the purpose of the law is not to compel expression, does the law have the effect of compelling expression, *and* does that compelled expression relate to the purposes underlying the guarantee of free expression, such that the law warrants constitutional disapprobation?⁴⁹

41. The *Sticker Act's* only purpose is to compel gas retailers to engage in political expression: it forces retailers to parrot Ontario's political message that the federal fuel charge is bad. A finding of violation is therefore automatic.

42. However, even if this Court were to find that the *Sticker Act* has a different purpose, there can be no doubt that the legislation's *effect* is to compel gas station owners to publicly comment on a political issue. Requiring one to engage in expression, particularly when the expression is political, clearly violates one's right to freedom of expression, and therefore warrants constitutional disapprobation. Applying the *Irwin Toy* analysis to the sticker's compelled expression

⁴⁸*Lavigne v OPSEU*, [1991] 2 SCR 211, at para 105 [*Lavigne*].

⁴⁹*McAteer v Canada (Attorney General)*, 2014 ONCA 578 (leave to appeal ref'd), at paras 7 and 69 [*McAteer*], citing *Irwin Toy*.

demonstrates that the *Sticker Act* violates section 2(b) of the *Charter*, and is therefore invalid and without effect.

i. **The *Sticker Act* Compels Gas Retailers to Engage in Expression**

43. Activity is expressive if it attempts to convey meaning.⁵⁰ The content of expression can be conveyed through an infinite variety of forms, including the written or spoken word, the arts, and even physical gestures or acts.⁵¹ Expression includes the choice to convey nothing or the choice to not convey certain things.⁵²

44. The gas stickers parrot Ontario's advertising, and convey Ontario's political position: that the charge imposed by the Federal *GGPPA* is a costly "tax" that forces purchasers to pay almost five cents more per litre of gasoline. The stickers clearly have expressive content.

ii. **The Purpose of the *Sticker Act* is to Compel Political Expression**

45. When determining the constitutional validity of a provision in a statute, a court considers its entire context by looking at the provision's ordinary and grammatical meaning, and ensuring that the interpretation is in harmony with: the scheme of the statute as a whole, the object of the statute, and the intention of the legislature.⁵³

a. **The *Sticker Act's* Political Purpose is Readily Discernable**

46. When one considers the ordinary and grammatical meaning of the language used in the *Sticker Act*, its meaning and purpose are easy to discern: (a) The *Sticker Act* is not a complex, multi-faceted statute. It consists of just seven, plain-language provisions, (b) Those provisions direct gas station owners to affix a **prescribed** sticker to their gas pumps, and they set out

⁵⁰*Irwin Toy*, at para 42.

⁵¹*Irwin Toy*, at para 43.

⁵²*Slaight Communications*, at para 95.

⁵³*Rizzo & Rizzo Shoes Ltd., Re*, [1998] 1 SCR 27, at para 21.

inspection and enforcement provisions to ensure that gas station owners comply with the legislation, by making it costly for them if they do not comply, and (c) The messaging on the prescribed sticker conveys Ontario's political message to voters that, with the looming federal election, the Liberal Party of Canada's policy on how to address climate change is bad, in particular because it hurts consumers by imposing a costly tax on them.⁵⁴

47. The *Sticker Act* does not *incidentally* affect gas retailers' freedom of expression. Its sole purpose is to compel private business to express Ontario's political message.

b. The Relevant Context is also Clearly Political

48. The undisputed contextual evidence further explains the political purpose that led to the enactment of this legislation, and demonstrates that the sticker itself is political propaganda, intended to *persuade* rather than to simply inform voters.

49. **"THE FEDERAL CARBON TAX will cost you"**, is a politically-charged message. Ontario deliberately chose to characterize the fuel charge as a "tax" – a loaded term intended to incense voters, and that was used despite the Ontario Court of Appeal's finding that the fuel charge is not a tax.

50. Ontario claims that the sticker provides information on the impact the federal fuel charge has on gas prices and consumers. But the sticker deliberately provides incomplete information, for the sole purpose of delivering a one-sided message to consumers:

- a. It does not tell consumers that there are other costs and other taxes, which are blended into the price of gas. This is in stark contrast to the sticker CIPMA

⁵⁴ *Lavigne*, at para 105.

proposed, which in a simple graph showed how other factors – such as Ontario’s provincial taxes – account for gas prices.⁵⁵

- b. It deliberately omits significant information about the Federal Rebate, which could negate the economic impact of the fuel charge on consumers. Accordingly, the message on the sticker that the federal carbon tax “**will cost you**” will be, for many fuel purchasers, factually incorrect. When confronted with this omission, Minister Phillips responded to the effect that the sticker would set out Ontario’s message, and the province would let the Federal government publicize the Federal Rebate program.⁵⁶ In other words, Ontario’s intention had little to do with transparency and everything to do with partisanship.

51. The title, the *Federal Carbon Tax Transparency Act*, implies that the public has somehow been misinformed, and that this Act is intended to right that wrong. Transparency necessarily implies that complete information is being provided. But as noted above, the sticker provides no information about the other charges that impact the price of gasoline, or about the Federal Rebate program that must be taken into account when assessing the cost of the federal fuel charge to purchasers.

52. Public statements made by Ontario’s representatives, such as Premier Ford and Minister Rickford, about its campaign to defeat the *GGPPA* also demonstrate the *Sticker Act*’s political purpose.⁵⁷

⁵⁵ Response to Request to Admit. See Appendix “B”, attached.

⁵⁶ See interview of Minister Phillips, dated May 13, 2019, available online: <https://www.youtube.com/watch?v=sv7fN1HEXCE>

⁵⁷ Legislative Assembly of Ontario, Official Report of Debates (Hansard) No. 94, 1st Session, 42nd Parliament, Tuesday 16 April 2019, pp. 4397-4398, Exhibit “A” to the Zwibel Reply. Zwibel Reply, para 7. Then, following the Liberal Party of Canada’s re-election, the Progressive

53. The language of the One Little Nickel advertising campaign – which was echoed in the sticker - pitted the Ontario Progressive Conservative Party against the federal Liberal Party, As noted by the Auditor General, “a primary objective of [the One Little Nickel] campaign was to foster a negative impression of the federal government and its carbon policy” and that it “aimed to foster a positive impression of the provincial governing party by saying that Ontario has a “better” plan for the environment.”⁵⁸ Canada’s media also saw the stickers as having the same political purpose.⁵⁹

54. As noted, the timing of the *Sticker Act’s* enactment is also instructive – it was timed to coincide with the federal election, in which climate change was a key issue. It was anticipated that if elected, the federal Conservatives were going to eliminate the fuel charge.

55. Ontario’s evidence on this motion is wholly consistent with its political campaign against the federal fuel charge. Ontario’s expert evidence is focused primarily on explaining: (a) why the sticker is an efficient means of highlighting concerns about the “carbon tax” to voters, and of assisting voters in choosing between competing government policies on climate action, and (b) why the federal *GGPPA* is bad policy.⁶⁰ Benjamin Zycher’s affidavit simply continues to promote Ontario’s position that the federal fuel charge is a tax, which will not work, and that voters need to receive this information. Ontario has put forward no government representative to define the

Conservative Party of Ontario stated that it would proceed with the challenge of the Carbon Tax at the Supreme Court of Canada (Zwibel Reply, para 7).

⁵⁸ Annual Report, p. 737.

⁵⁹ See for example: Robert Benzie “Ford planning stickers for gas pumps in protest of carbon tax”, *Toronto Star* (9 April 2019), at Exhibit “2” to the Zwibel Affidavit; Martin Regg Cohn “Doug Ford’s \$30 million carbon tax fight is money down the drain but it keeps his brand afloat”, *Toronto Star* (3 July 2019), at Exhibit “B” to the Zwibel Reply; Star Editorial Board, “Ford uses our money to spread more lies” *Toronto Star* (13 May 2019), at Exhibit “B” to the Zwibel Reply;

⁶⁰ Variations on the words “vote” and “voters” appear 120 times in the Zycher Affidavit. See in particular paragraphs 16,38 and 59 of the Zycher Affidavit.

purpose of the *Sticker Act*, or to rebut the CCLA's claim that the stickers formed part of Ontario's political campaign.

56. Ontario may have been entitled to spend millions of dollars in opposing the *GGPPA* through its legal challenges and multimedia campaign. It was not entitled to compel private citizens to act as foot-soldiers in disseminating its political message on privately-owned gas pumps. Ontario's specific purpose is to compel gas retailers to convey Ontario's political message. The *Sticker Act* automatically violates section 2(b) of the *Charter*.⁶¹

iii. The Effect of the *Sticker Act* Warrants Constitutional Disapprobation

57. Should this Court find that compelled speech is only an effect of the *Sticker Act* rather than its purpose, the legislation still violates section 2(b) because, as compelled political speech, its effect warrants constitutional disapprobation.

58. The Supreme Court of Canada has noted that public identification of the source of the expression and an opportunity to disavow the expression are relevant (but not determinative) factors to be considered under this branch of the *Irwin Toy* test.⁶² These factors are relevant because, as Wilson J. noted in *Lavigne*, "If a law does not really deprive one of the ability to speak one's mind or does not effectively associate one with a message with which one disagrees, it is difficult to see how one's right to pursue truth, participate in the community, or fulfil oneself is denied."⁶³ The CCLA submits however that these factors have almost no relevance where the compelled speech in question is political speech for the benefit of the government compelling the speech. Certainly, if Ontario required homeowners to post a sign that says "Trudeau is a bad PM.

⁶¹*Lavigne*, at para 104.

⁶²*Lavigne*, at paras 131-132, referring to *Slaight Communications* and *National Bank of Canada v R.C.I.U.*, [1984] 1 SCR 269.

⁶³*Lavigne*, at para 134.

Vote Conservative”, this form of compelled speech would be worthy of disapprobation, even if the sign was attributed to the Conservative Party and the law compelling the sign did not preclude homeowners from having additional signs on their lawn where they could express their own opinions.

59. American jurisprudence also holds that the ability to disavow and public identification with a message are relevant to compelled speech challenges under the First Amendment. In *Wooley v Maynard*, the State of New Hampshire directed its citizens to include the slogan “Live Free or Die” on their license plates.⁶⁴ The Supreme Court of the United States concluded that a State may not constitutionally require an individual to participate in the dissemination of an ideological message by displaying it on his private property in a manner and for the express purpose that it be observed and read by the public. While car owners could have bumper stickers setting out contrary statements to the slogan on the license plate, and it was arguable that the common message on all plates was not the message of the car owner, the Court in *Wooley* held that “[a] system which secures the right to proselytize religious, political, and ideological causes must also guarantee the concomitant right to decline to foster such concepts.” The Supreme Court of the United States in *PruneYard Shopping Center v Robins* found that the result in *Wooley* would have been the same if the State had directed its citizens to place the slogan in their commercial shop windows rather than on their private automobiles.⁶⁵

a. The Sticker’s Message is Insufficiently Attributed to Ontario

60. The majority of the sticker is dedicated to its political message with no attribution to the government of Ontario. There is no statement which informs the reader that Ontario distributed

⁶⁴ *Wooley v Maynard*, 97 S.Ct. 1428 (April 20, 1977) [*Wooley*].

⁶⁵ *PruneYard Shopping Center v Robins*, 100 S.Ct. 2035 (June 19, 1995), concurring opinion of Justices Powell and White [*PruneYard*].

the sticker to gas retailers, or compelled the retailers to place the stickers on their gas pump. The first impression given by the sticker is that it is the gas station owner's sticker.

61. The sticker includes the word "Ontario" in its bottom right corner, and it includes the words "Find out more about taxes on gas at Ontario.ca/carbontax" in its bottom left-hand corner beside the Ontario trillium symbol, but appears in smaller typeface than is used on the rest of the sticker. There is no acknowledgement that this is in fact Ontario's sticker, or that gas station owners have been compelled to post it. At most, the sticker suggests that Ontario's website provides information that is supportive of the position expressed on the sticker. Accordingly, a cursory examination of the sticker does not suggest that the sticker's message is attributable to Ontario, rather than to the gas retailer.

62. The sticker's insufficient attribution to Ontario can readily be contrasted to the inspection notice that was considered by the Ontario Divisional Court in *Ontario Restaurant Hotel & Motel Assn. v Toronto (City)*.⁶⁶ At the top of those notices appeared the words "Toronto Public Health", in the body of the notices appeared the words "This establishment was inspected by Toronto Public Health", and at the bottom of the notices appeared the words "Toronto Public Health" followed by the signature of the Medical Officer of Health for the City of Toronto.⁶⁷ The Divisional Court found that "A cursory examination of the notices would lead a member of the public to conclude that it was attributable to no other person or body than Toronto Public Health."⁶⁸ These notices were clearly attributed to the City of Toronto, rather than the individual restaurant owners.⁶⁹

⁶⁶ *Ontario Restaurant Hotel & Motel Assn. v Toronto (City)*, [2004] OJ No. 190 (Div. Ct.) [*Ontario Restaurant*].

⁶⁷ *Ontario Restaurant*, at para 46.

⁶⁸ *Ontario Restaurant*, at para 46.

⁶⁹ *Ontario Restaurant*, at para 46.

b. Gas retailers have no meaningful opportunity to disavow the sticker's message

63. The *Sticker Act* states that stickers must be displayed in a prominent location on the top two-thirds of each gasoline pump in a straight, upright position, and must not be obscured from view.⁷⁰ The *Sticker Act* does not prohibit gas retailers from disavowing the message contained in the stickers. However, the Supreme Court of Canada has emphasized that opportunities to disavow a compelled message “must be meaningful and we should not be too quick to ascribe to persons opportunities and abilities which they do not really possess.”⁷¹

64. The CCLA unsuccessfully made efforts to find a gas retailer to act as a co-plaintiff in this matter. One of the reasons gas retailers declined to participate was because they were concerned that customers who support Ontario would be alienated by the retailer's involvement in this litigation.⁷² Gas retailers who share this concern certainly will not publicly disavow Ontario's sticker.

65. This is why the right to say nothing is particularly important when the subject matter is highly political and divisive, and where the forum for expression is public. Here, a gas retailer who does not wish to publicly express his or her views about this hotly-contested political issue has no meaningful opportunity to exercise his or her section 2(b) rights through disavowal. Gas retailers should not be forced to enter this debate publicly.

⁷⁰ Ontario Government, “Federal Carbon Tax Transparency Sticker”, (23 August 2019), online: <https://www.ontario.ca/page/federal-carbon-tax-transparency-sticker>

⁷¹ *Lavigne*, at para 134.

⁷² *Zwibel Affidavit*, para 30.

c. The compelled expression relates to a key purpose underlying the *Charter* guarantee

66. The protection of freedom of expression is premised upon fundamental principles and values that promote the search for and attainment of truth, participation in social and political decision-making, and the opportunity for individual self-fulfillment through expression.⁷³ As Dickson C.J. stated in *R v Keegstra*:

The connection between freedom of expression and the political process is perhaps the linchpin of the section 2(b) guarantee, and the nature of this connection is largely derived from the Canadian commitment to democracy. Freedom of expression is a crucial aspect of the democratic commitment, not merely because it permits the best policies to be chosen from among a wide array of proffered options, but additionally because it helps to ensure that participation in the political process is open to all persons.⁷⁴

67. The expression compelled by the *Sticker Act* is clearly political, engaging these fundamental values and purposes behind the guarantee to freedom of expression. Even if the *Sticker Act's* purpose is not to compel expression, and the legislation only incidentally affects freedom of expression, the impact of the sticker on gas retailers' section 2(b) *Charter* rights warrants constitutional disapprobation because of its political nature of this compelled speech.

68. Ontario pleads in paragraph 20 of its Statement of Defence that the *Sticker Act* furthers the purposes of freedom of expression, "by promoting informed consumer choice and transparency in relation to the effect on the price of gasoline sold in Ontario of the charge referred to in subsection 17(1) of the *GGPPA*."

69. But the partisan, political message of the words on the sticker is evident, and the fact that the message on the sticker is political rather than informational is reinforced by all of the

⁷³ *Irwin Toy*, at para 54.

⁷⁴ *R v Keegstra*, [1990] 3 SCR 697, at para 94 [*Keegstra*].

surrounding factors outlined in the points above. This case is therefore distinguishable from *Ontario Restaurant Hotel & Motel Assn. v Toronto (City)*, in which the Ontario Divisional Court found that the purpose of legislation requiring restaurants to display food safety inspection signs was not to “put a particular message into the mouth of the [applicant]”, but rather included: protection of the public from health hazards; educating the public to make informed restaurant choices; encouraging restaurant owners to attain and maintain high standards; and reducing the costs of inspections by reducing the number of re-inspections caused by non-compliance with the food Premises Regulations.⁷⁵

70. The intended effect of the *Sticker Act* is to persuade consumers to oppose the so-called Carbon Tax, and at the time of enactment, to vote in the federal election for the party that was most likely to repeal it. The effect of the sticker is to feed the provincial government’s message to the public via gas retailers; foot-soldiers for Ontario’s political ends. This effect clearly warrants constitutional disapprobation as it violates the linchpin of the section 2(b) guarantee: the connection between freedom of expression and the political process.

Issue 2: This Violation is not Justified under Section 1 of the Charter

71. If this Court concludes that the *Sticker Act*, in either purpose or effect, infringes section 2(b) of the *Charter*, the onus will then shift to Ontario to justify the infringement under section 1. It is not apparent how Ontario will attempt to justify the breach, and accordingly responsive section 1 arguments will be made in a reply factum if required.

72. Preemptively, the CCLA briefly notes that because of the importance of the right to free expression, “any attempt to restrict the right must be subjected to the most careful scrutiny”.⁷⁶

⁷⁵ *Ontario Restaurant*, at para 42.

⁷⁶ *R v Sharpe*, 2001 SCC 2, at para 22 [*Sharpe*].

However, the “degree of constitutional protection may vary depending on the nature of the expression at issue.”⁷⁷ The Supreme Court has held that political speech is the “single most important and protected type of expression” and it “lies at the core of the guarantee of free expression.”⁷⁸ Therefore, compelled political speech will generally be the most difficult to justify.

73. If this Court were to find that the purpose of the *Sticker Act* is not political, but is merely to inform the public about increases in gasoline prices attributable to the *GGPPA*, then Ontario’s purpose in enacting this legislation is neither pressing nor substantial. The *Sticker Act* also does not serve this stated objective: it instead undermines this goal by omitting necessary information including the purpose of the *GGPPA*, and the Federal Rebate. The *Sticker Act* is not minimally impairing because Ontario has reasonable alternative schemes for achieving any education objective, including through its own advertising campaign or by making the placement of the stickers voluntary for gas retailers. The deleterious effects of the *Sticker Act* on the freedom of expression rights of gas retailers outweigh the legislation’s minimal, if any, salutary effects.

Issue 3: The CCLA has Public Interest Standing

74. The CCLA acknowledges that it is not being compelled to express anything. It asks the Court to find that it has public interest standing to advance this action and this motion. In determining whether to grant public interest standing, courts weigh three factors articulated by the Supreme Court of Canada in *Downtown Eastside*: (a) Is there a serious justiciable issue raised? (b) Does the applicant have a real stake or genuine interest in the issue? And, (c) In all the circumstances, is the proposed proceeding a reasonable and effective way to bring the issue

⁷⁷ *Thomson Newspapers Co. v Canada (Attorney General)*, [1998] 1 SCR 877, at para 91 [*Thomson Newspapers*]; *RJR-MacDonald Inc. v Canada*, [1995] 3 SCR 199 [*RJR-MacDonald*]; *Sharpe*, at para 181; *R v Butler*, [1992] 1 SCR 452 [*Butler*].

⁷⁸ *Harper v Canada (Attorney General)*, 2004 SCC 33, at para 11.

before the courts? Courts exercise this discretion to grant or refuse standing in a “liberal and generous manner.”⁷⁹

i. Serious Justiciable Issue

75. Whether the *Charter* permits a government to coerce private citizens to promote, subject to significant fines, the government’s political message is certainly a serious justiciable issue. The constitutionality of the *Sticker Act* is an important constitutional issue that is far from frivolous.⁸⁰

76. The CCLA is not alone in its contention that the *Sticker Act* is unconstitutional. Federal Environment Minister Catherine McKenna has stated that the stickers are “misleading political propaganda.”⁸¹ Greenpeace Canada advised Ontario that it considered the *Sticker Act* to be compelled speech that violated the *Charter*.⁸² The Ontario Chamber of Commerce advised Ontario that gas station operators had expressed concerns regarding the political nature of the stickers, viewing them as a violation of their rights and freedoms.⁸³ The CIPMA advised Ontario that it found the *Sticker Act* “a bit partisan” and suggested a less politicized alternative.⁸⁴

77. PEN International is an organization that advocates for the protection of freedom of expression internationally. The fact that PEN Canada seeks to intervene in this matter is another sign of the serious judicial nature of these proceedings.

78. Consideration of this factor unequivocally supports exercising discretion in favour of standing.

⁷⁹ *Downtown Eastside*, at para 2, quoting *Canadian Council of Churches*, [1992] 1 SCR 236, at p. 253.

⁸⁰ *Downtown Eastside*, at para 54.

⁸¹ Exhibit “2” to the Zwibel Affidavit, at para 19.

⁸² Response to Request to Admit.

⁸³ Exhibit “7” to the Zwibel Affidavit.

⁸⁴ Exhibit “11” to the Zwibel Affidavit.

ii. **The CCLA's Genuine Interest in the Issue**

79. The CCLA has a genuine interest in these proceedings and is engaged with the constitutional issue raised.⁸⁵ The Ontario Superior Court has recognized that the CCLA is an “experienced and qualified public interest litigant”.⁸⁶ The CCLA has a long history of intervening in litigation on matters of public interest, and it has been granted leave to intervene in many of the leading freedom of expression cases at the Supreme Court of Canada.⁸⁷ The CCLA has considerable experience with challenging legislation on the basis of constitutionality.

80. The CCLA has exhibited particular interest in the constitutional validity of the *Sticker Act*, as evidenced by its activities following the announcement of the legislation, described in section “G” of the “Facts” section of this Factum.

81. Recently the Ontario Court of Appeal granted public interest standing to Ryan Alford, a law professor who initiated a challenge to the *National Security and Intelligence Committee of Parliamentarians Act*.⁸⁸ The CCLA's interest in the *Sticker Act* is at least as great as Mr. Alford's. The CCLA has demonstrated a genuine and persistent interest in this action and the constitutional issue it involves. Consideration of this factor unequivocally supports exercising discretion in favour of standing.

iii. **This Proceeding is a Reasonable Way to bring the Issue before the Court**

82. Gas retailers who could be charged pursuant to the *Sticker Act* are entitled, as of right, to raise the constitutional issue that the CCLA raises in this case. However, the existence of potential plaintiffs must be considered in light of practical realities. The CCLA has made efforts to find a

⁸⁵ *Downtown Eastside*, at para 43.

⁸⁶ *Landau v Ontario (Attorney General)*, 2013 ONSC 6152, at para 22(c).

⁸⁷ See for example: *R v Keegstra*, [1990] 3 SCR 697; *Little Sisters Book & Art Emporium v Canada*, 2000 SCC 69; *R v National Post*, 2010 SCC 16; *R v Butler*, [1992] 1 SCR 452.

⁸⁸ *Alford v Canada (Attorney General)*, 2019 ONCA 657.

gas retailer to act as a co-plaintiff. Gas retailers declined to participate in this litigation for various reasons, including general uneasiness about litigating against Ontario, and a concern that customers would take issue with the retailer's involvement in this challenge.

83. Gas retailers' unwillingness to bring this challenge underscores the political nature of Ontario's message in the sticker.⁸⁹ Gas retailers were conscripted as foot-soldiers by Ontario to influence the federal election in the Conservative Party's favour. If the sticker is simply informational, as Ontario claims, it is unlikely that gas retailers would have these concerns about offending their customers and corporate head-office, who may support Ontario.

84. Even if gas retailers were willing to engage in this litigation, the inherent unpredictability of individual trials would make it difficult for private plaintiffs to raise the type of constitutional challenge raised by the CCLA in this case.⁹⁰ Moreover, the fact that many individual lawsuits could be brought in response to individual fines imposed by the *Sticker Act* may in fact support the view that a comprehensive declaratory action brought by a public interest litigant is a more reasonable and effective means of obtaining final resolution of the issues raised.⁹¹

85. The CCLA has the capacity to undertake this litigation. The CCLA is well-organized, with considerable expertise with respect to litigating constitutional challenges. This further demonstrates that the action is an effective means of bringing the issue to court, in that it will be presented in a context suitable for adversarial determination.⁹²

⁸⁹Zwibel Affidavit, para 29

⁹⁰ *Downtown Eastside*, at para 69

⁹¹ *Downtown Eastside*, at para 70

⁹² *Downtown Eastside*, at para 74

86. The presence of potential plaintiffs does not preclude the CCLA's claim for public interest standing.⁹³ Moreover, because the individuals directly impacted by the *Sticker Act* are unwilling or unable to participate in the litigation, public interest standing ought to be granted to the CCLA.⁹⁴

87. The CCLA's suit is, in all of the circumstances, a reasonable and effective means to bring this challenge to court.⁹⁵ Consideration of the three factors articulated by the Supreme Court of Canada in *Downtown Eastside* unequivocally supports exercising discretion in favour of standing.

PART IV - RELIEF SOUGHT

88. The CCLA seeks declarations as follows pursuant to section 52(1) of the *Charter*:

- (a) That sections 2, 4 and 5 the *Sticker Act* violate section 2(b) of the *Charter*, to the extent that it compels speech; and
- (b) That the *Sticker Act* is therefore of no force and effect.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 8th day of May, 2020.



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⁹³*Manitoba Métis Federation Inc. v Canada (Attorney General)*, 2013 SCC 14, at para 43.

⁹⁴*Canadian Doctors for Refugee Care v Canada (Attorney General)*, 2014 FC 651, at paras 340-342.

⁹⁵*Downtown Eastside*, at para 44

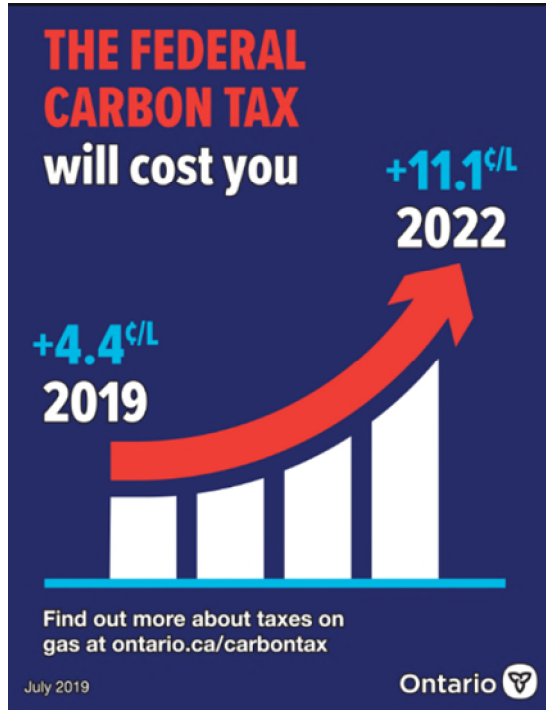
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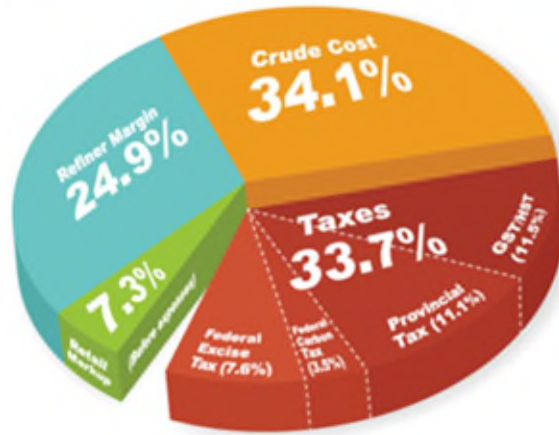
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Appendix "A"



Appendix "B"



Figures based on 25 Markets in Ontario over a 12-month average in 2018. Taxes are inclusive of the forecasted Federal Carbon Tax. Source: Kest Group Ltd

SCHEDULE A

- 1 *Reference re Greenhouse Gas Pollution Pricing Act*, 2019 ONCA 544
- 2 *Downtown Eastside Sex Workers United Against Violence Society v Canada (Attorney General)*, 2012 SCC 45
- 3 *Slaight Communications Inc. v Davidson*, [1989] 1 SCR 1038
- 4 *Irwin Toy Ltd. v Quebec (Attorney General)*, [1989] 1 SCR 927
- 5 *Lavigne v OPSEU*, [1991] 2 SCR 211
- 6 *McAteer v Canada (Attorney General)*, 2014 ONCA 578
- 7 *Rizzo & Rizzo Shoes Ltd., Re*, [1998] 1 SCR 27
- 8 *Wooley v Maynard*, 97 S.Ct. 1428 (April 20, 1977)
- 9 *PruneYard Shopping Center v Robins*, 100 S.Ct. 2035 (June 19, 1995)
- 10 *Ontario Restaurant Hotel & Motel Assn. v Toronto (City)*, [2004] OJ No. 190 (Div. Ct.)
- 11 *R v Keegstra*, [1990] 3 SCR 697
- 12 *R v Sharpe*, 2001 SCC 2
- 13 *Thomson Newspapers Co. v Canada (Attorney General)*, [1998] 1 SCR 877
- 14 *RJR-MacDonald Inc. v Canada*, [1995] 3 SCR 199
- 15 *Harper v Canada (Attorney General)*, 2004 SCC 33
- 16 *Landau v Ontario (Attorney General)*, 2013 ONSC 6152
- 17 *Alford v Canada (Attorney General)*, 2019 ONCA 657
- 18 *Manitoba Métis Federation Inc. v Canada (Attorney General)*, 2013 SCC 14
- 19 *Canadian Doctors for Refugee Care v Canada (Attorney General)*, 2014 FC 651

SCHEDULE B

Federal Carbon Tax Transparency Act, 2019, S.O. 2019, c. 7, Sched. 23.

Notice on gasoline pumps

2 (1) The person who is licensed under the *Technical Standards and Safety Act, 2000* to operate a retail outlet at which gasoline is sold at a gasoline pump and put into the fuel tanks of motor vehicles shall,

(a) obtain from the Minister copies of the prescribed notice with respect to the price of gasoline sold in Ontario; and

(b) ensure the notice referred to in clause (a) is affixed to each gasoline pump at the retail outlet in such manner as may be prescribed.

Contravention of notice requirements

4 (1) Every person who contravenes subsection 2 (1) is guilty of an offence and on conviction is liable,

(a) in the case of an individual,

(i) for a first offence, to a fine of not more than \$500 for every day or part of a day on which the offence occurs or continues, and

(ii) for a second or subsequent offence, to a fine of not more than \$1,000 for every day or part of a day on which the offence occurs or continues; and

(b) in the case of a corporation,

(i) for a first offence, to a fine of not more than \$5,000 for every day or part of a day on which the offence occurs or continues, and

(ii) for a second or subsequent offence, to a fine of not more than \$10,000 for every day or part of a day on which the offence occurs or continues.

Regulations

5 (1) The Lieutenant Governor in Council may make regulations for the purpose of carrying out the provisions of this Act, including,

(a) prescribing anything that may be prescribed under this Act;

(b) providing for time limits within which the requirements under clauses 2 (1) (a) and (b) must be complied with.

Contents of the prescribed notice

(2) The notice prescribed under subsection (1) for the purpose of clause 2 (1) (a),

(a) shall set out information with respect to the effect of the charge referred to in subsection 17 (1) of the *Greenhouse Gas Pollution Pricing Act* (Canada) on the price of gasoline sold in Ontario, which may include information as estimated or otherwise determined by the Minister; and

(b) may set out other information with respect to the price of gasoline sold in Ontario, which may include information as estimated or otherwise determined by the Minister.

O. Reg. 275/19: GENERAL, under *Federal Carbon Tax Transparency Act*, 2019, S.O. 2019, c. 7, Sched. 23

Prescribed notice

1. For the purpose of clause 2 (1) (a) of the Act, the prescribed notice is,

(a) the notice in English identified as the Federal Carbon Tax Transparency Sticker — English version, dated July 2019 and available on a website of the Government of Ontario; or

(b) the notice in French identified as the Federal Carbon Tax Transparency Sticker — French version, dated July 2019 and available on a website of the Government of Ontario.

Manner of affixing notice

2. The notice prescribed by clause 1 (a) or (b) shall be affixed to the gasoline pump upright and in a prominent location within the top two-thirds of the side of the gasoline pump that faces motor vehicles when the pump is used to put gasoline into their fuel tanks, and shall not be obscured from view.

Notice removed or defaced

3. If a notice is removed or defaced, the requirements under clauses 2 (1) (a) and (b) of the Act must be complied with as soon as possible.

Greenhouse Gas Pollution Pricing Act, S.C. 2018, c. 12, s. 186

Preamble

Whereas there is broad scientific consensus that anthropogenic greenhouse gas emissions contribute to global climate change;

Whereas recent anthropogenic emissions of greenhouse gases are at the highest level in history and present an unprecedented risk to the environment, including its biological diversity, to human health and safety and to economic prosperity;

Whereas impacts of climate change, such as coastal erosion, thawing permafrost, increases in heat waves, droughts and flooding, and related risks to critical infrastructures

and food security are already being felt throughout Canada and are impacting Canadians, in particular the Indigenous peoples of Canada, low-income citizens and northern, coastal and remote communities;

Whereas Parliament recognizes that it is the responsibility of the present generation to minimize impacts of climate change on future generations;

Whereas the United Nations, Parliament and the scientific community have identified climate change as an international concern which cannot be contained within geographic boundaries;

Whereas Canada has ratified the United Nations Framework Convention on Climate Change, done in New York on May 9, 1992, which entered into force in 1994, and the objective of that Convention is the stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system;

Whereas Canada has also ratified the Paris Agreement, done in Paris on December 12, 2015, which entered into force in 2016, and the aims of that Agreement include holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change;

Whereas the Government of Canada is committed to achieving Canada's Nationally Determined Contribution – and increasing it over time – under the Paris Agreement by taking comprehensive action to reduce emissions across all sectors of the economy, accelerate clean economic growth and build resilience to the impacts of climate change;

Whereas it is recognized in the Pan-Canadian Framework on Clean Growth and Climate Change that climate change is a national problem that requires immediate action by all governments in Canada as well as by industry, non-governmental organizations and individual Canadians;

Whereas greenhouse gas emissions pricing is a core element of the Pan-Canadian Framework on Clean Growth and Climate Change;

Whereas behavioural change that leads to increased energy efficiency, to the use of cleaner energy, to the adoption of cleaner technologies and practices and to innovation is necessary for effective action against climate change;

Whereas the pricing of greenhouse gas emissions on a basis that increases over time is an appropriate and efficient way to create incentives for that behavioural change;

Whereas greenhouse gas emissions pricing reflects the “polluter pays” principle;

Whereas some provinces are developing or have implemented greenhouse gas emissions pricing systems;

Whereas the absence of greenhouse gas emissions pricing in some provinces and a lack of stringency in some provincial greenhouse gas emissions pricing systems could contribute to significant deleterious effects on the environment, including its biological diversity, on human health and safety and on economic prosperity;

And whereas it is necessary to create a federal greenhouse gas emissions pricing scheme to ensure that, taking provincial greenhouse gas emissions pricing systems into account, greenhouse gas emissions pricing applies broadly in Canada;

Now, therefore, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Distribution of Fuel Charge

165 (1) In this section, *net amount* in respect of a province or area and a period fixed by the Minister means the charges levied by Her Majesty in right of Canada under this Part in respect of the province or area and that period less any amounts in respect of the charges that are rebated, refunded or remitted under this Part or any other Act of Parliament in that period.

Distribution

(2) For each province or area that is or was a listed province, the Minister must distribute the net amount for a period fixed by the Minister, if positive, in respect of the province or area. The Minister may distribute that net amount

(a) to the province;

(b) to persons that are prescribed persons, persons of a prescribed class or persons meeting prescribed conditions; or

(c) to a combination of the persons referred to in paragraphs (a) and (b).

Distribution — charge payments

188 (1) The Minister of National Revenue must distribute revenues from excess emissions charge payments that are made under section 174 or 178 in relation to covered facilities that are located in a province or area. The Minister of National Revenue may distribute the revenues to

(a) that province;

(b) persons that are specified in the regulations or that meet criteria set out in the regulations; or

(c) a combination of both.

Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11.

Fundamental freedoms

2. Everyone has the following fundamental freedoms:

- (a) freedom of conscience and religion;
- (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
- (c) freedom of peaceful assembly; and
- (d) freedom of association.

THE CORPORATION OF THE CANADIAN CIVIL LIBERTIES
ASSOCIATION

Plaintiff (Moving Party)

Court File No. CV-19-00626-685-0000
- and - THE ATTORNEY GENERAL OF ONTARIO

Defendant (Responding Party)

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT TORONTO

**FACTUM OF THE MOVING
PARTY, THE PLAINTIFF**

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