

CV. 19. 00626685 0000

COURT FILE NO:

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:



**THE CORPORATION OF THE CANADIAN CIVIL LIBERTIES
ASSOCIATION**

Plaintiff

- and -

**MINISTRY OF ENERGY, NORTHERN DEVELOPMENT AND MINES, AND HER
MAJESTY THE QUEEN IN RIGHT OF ONTARIO**

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFFS' CLAIM, and \$1,500 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the Court. If you believe the amount claimed for costs is excessive, you may pay the plaintiffs' claim and \$400 for costs and have the costs assessed by the Court.

Date: September 3-19 Issued by


Local Registrar

Address of court office: 393 University Avenue
10th Floor
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TO: The Honourable Doug Downey
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CLAIM

1. The plaintiff seeks:
 - (a) a declaration that sections 2, 4 and 5 of the *Federal Carbon Tax Transparency Act, 2019* S.O. 2019, c.7, Sch 23 (referred to below as the "Sticker Act") violate s.2(b) of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982, c 11*;
 - (b) a declaration that sections 2,4 and 5 of the *Federal Carbon Tax Transparency Act, 2019* are of no force and effect; and
 - (c) such further and other relief as counsel may request and this Honourable Court deems just.

The Parties

2. The Canadian Civil Liberties Association (the "CCLA") is a registered charity. Founded in 1964, it is a national, independent, non-profit, and non-governmental organization dedicated to the furtherance of civil liberties in Canada. CCLA has several thousand paid supporters drawn from diverse backgrounds. A wide variety of persons, occupations, and interests are represented in the national membership. The CCLA receives no funding from either the federal or any provincial government.

3. The CCLA was constituted to promote respect for fundamental human rights and civil liberties, and to defend and foster their recognition. In every issue on which the CCLA advocates, it directs its attention to the critical reconciliation of civil liberties and competing public interests. The underlying purpose of its work is to promote and maintain a free and democratic society in Canada.
4. The Corporation of the Canadian Civil Liberties Association is a non-profit corporation established pursuant to the laws of Canada. The Corporation's objects are identical to those of the CCLA and its governance is closely linked to that of the CCLA.
5. Pursuant to s.14 of the *Crown Liability and Proceedings Act*, S.O. 2019, c. 7. Sch 17, Her Majesty the Queen in Right of Ontario is named as the lawful representative of the Crown for the Province and Government of Ontario (hereinafter referred to as "Ontario").
6. The Minister of Energy, Northern Development and Mines, is responsible for administering and enforcing the *Federal Carbon Tax Transparency Act, 2019*.

Background

7. In June, 2018 the Federal government enacted the *Greenhouse Gas Pollution Pricing Act* (the "GGPPA"), as part of its plan to minimize the impacts of climate change through the reduction of greenhouse gas emissions. For provinces whose carbon pricing system does not meet certain Federal requirements, the GGPPA imposes an increase in the price of gasoline sold at gas stations. The Federal

government says the price increase is being imposed in the hope it will reduce the purchase of gas, with the result that less carbon will be emitted by cars.

8. Ontario refers to the increased costs imposed by the GGPPA as a "Carbon Tax".
9. As a result of legislative changes implemented by the current provincial government, the Carbon Tax now applies in Ontario. Ontario takes issue with the Carbon Tax, and has been proactively opposing it:
 - (a) in April 2019 Ontario challenged the constitutionality of the GGPPA ;
 - (b) Ontario has engaged in an ongoing television, radio and social media campaign expressing its opposition to the Carbon Tax; and
 - (c) most recently, Ontario passed the *Federal Carbon Tax Transparency Act, 2019*.
10. In its communications about the Carbon Tax, Ontario's main complaint is the increased cost consumers will pay for gas. Ontario maintains that it has more effective ways to fight climate change than imposing a tax on gasoline users. In response, the Federal government claims the GGPPA has a rebate program that will provide most individual gas users with a rebate that will exceed any increase in the price they will have to pay for gas, as a result of the increases imposed by the GGPPA.
11. Ontario recognizes that the Carbon Tax is but one component in the price of gas in Ontario.

12. Ontario enacted the *Federal Carbon Tax Transparency Act, 2019* — also known as the “Sticker Act” — in June of this year.

(a) Section 2(1) of the Sticker Act requires all those licenced under the *Technical Standards and Safety Act, 2009* to operate a retail outlet at which gas is sold at a gasoline pump and put into fuel tanks of motor vehicles to:

(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.

(emphasis added)

(b) Section 5 of the Sticker Act deals with regulations, including with respect to the content of the sticker. Section 5 (2) provides that the notice to be created by regulation:

(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.

13. Section 4 of the Sticker Act sets out the penalties for failure to comply with its requirements. Section 4(1) (b) provides:

(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.

14. Comments Ontario has made about the Sticker Act in the Ontario Legislature and to the public, demonstrate that the content of the Stickers are political in nature, and form part of Ontario's political campaign against the Carbon Tax:

- "We're going to stick it to the Liberals and remind the people of Ontario how much this job-killing regressive carbon tax costs"
- "It's about transparency and accountability"... "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 and its no different than the other stickers you've seen over the years."
- "These transparency measures will make sure families know exactly how much the Trudeau carbon tax is added to the price per litre at every gas pump across the province"
- "You slap a sticker on there to inform the public, this is why the gas prices are going up"

Constitutional Challenge and Standing

14. The Sticker Act requirements do not relate to any technical standards or any concerns about safety.

15. The sticker imposed by the Sticker Act does not refer to the Federal rebate program nor to the relative role of the Carbon Tax in the price of gas in Ontario.
16. The sticker imposed by the Sticker Act, constitutes compelled political speech, in violation of s.2(b) of the *Charter* because under threat of significant fines it legislatively requires gas station owners to express the defendants' position on the Carbon Tax.
17. By letter dated April 29, 2019, the plaintiff notified the defendants that it would be bringing legal proceedings to challenge the constitutionality of the Sticker Act upon it coming into force. The Sticker Act came into force on August 30, 2019.
18. The CCLA has made diligent attempts to identify a gas station owner or association that would be willing to challenge the constitutionality of the Sticker Act, but has to date not been able to do so.
19. The plaintiff proposes this action be tried in Toronto, Ontario.

September 3RD, 2019

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THE CORPORATION OF THE CANADIAN CIVIL LIBERTIES ASSOCIATION

v. MINISTER OF ENERGY

Plaintiff

Defendants

**ONTARIO
SUPERIOR COURT OF JUSTICE**

(PROCEEDING COMMENCED AT TORONTO)

STATEMENT OF CLAIM

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