

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

THE CORPORATION OF THE CANADIAN CIVIL LIBERTIES ASSOCIATION

Plaintiff

- and -

THE ATTORNEY GENERAL OF ONTARIO

Defendant

**STATEMENT OF DEFENCE OF THE DEFENDANT,
THE ATTORNEY GENERAL OF ONTARIO**

Admissions and denials

1. The Defendant, the Attorney General of Ontario, admits the allegations contained in paragraphs 6 (except for the words “and enforcing”), 7 (but only the second and third sentences), 8, 10 (but only the last sentence and only to the extent that it reports an assertion made by a third party), 11, the second paragraph numbered 14 (that begins with the words “The Sticker Act”), and 17 of the Statement of Claim.
2. The Defendant denies the allegations contained in paragraphs 6 (but only the words “and enforcing”), 7 (but only the first sentence), 9, 10 (the first two sentences), 12, 13, the first paragraph numbered 14 (that begins with the words “Comments Ontario has made”) and 15 of the Statement of Claim, as they are inaccurate, incomplete, irrelevant and/or

argumentative. The Defendant's statement of the material facts on which it relies is set out below.

3. The Defendant has no knowledge of the allegations contained in paragraphs 2, 3, 4 and 18 of the Statement of Claim.

The federal *Greenhouse Gas Pollution Pricing Act* and the related *Income Tax Act* amendments

4. On June 21, 2018, the federal *Greenhouse Gas Pollution Pricing Act*, S.C. 2018, c. 12, s. 186 ("the *GGPPA*") was enacted. The *GGPPA* creates a number of "charges" that impose a federal price on greenhouse gas emissions in "listed provinces". A province is listed where the federal Governor in Council decides it has not sufficiently priced greenhouse gas emissions.
5. In October 2018, the Governor in Council named Ontario as a "listed province" under the *GGPPA*. Effective April 1, 2019, the *GGPPA* imposed a charge of 4.42 cents per litre of gasoline sold in Ontario. The *GGPPA* provides that this charge will increase to 11.05 cents per litre of gasoline by 2022.
6. In December 2018, the federal *Income Tax Act* was amended to provide a refundable "Climate Action Incentive" credit that individuals can claim on their tax returns. Despite its name, the credit amount is not connected to individuals' actions or their costs arising under the *GGPPA*'s carbon tax. The amount of the credit is based solely on an individual's province of residence, number of dependents, and whether the individual lives in an urban or rural area.

7. Paragraph 9(a) of the Statement of Claim incorrectly states that “in April 2019 Ontario challenged the constitutionality of the *GGPPA*.” While the Defendant notes that the court references and appeals concerning the validity of the *GGPPA* under the *Constitution Act, 1867* are irrelevant to the issues raised in this action, the Defendant sets out the following facts to correct the erroneous account pleaded in the Statement of Claim. The Lieutenant Governor in Council of Ontario referred a question to the Court of Appeal for Ontario in August 2018 regarding the constitutional validity of the federal *GGPPA*. The Court of Appeal heard oral arguments in April 2019 and released its final opinion in June 2019. Ontario filed a notice of appeal to the Supreme Court of Canada on August 28, 2019. The Government of Ontario’s position is that the *GGPPA* imposes unconstitutional disguised taxes that are not within the authority of the Parliament of Canada under the *Constitution Act, 1867*. The Lieutenant Governors in Council of Saskatchewan and Alberta also referred questions to the Courts of Appeal for their Provinces regarding the constitutional validity of the *GGPPA* in April 2018 and June 2019, respectively.
8. Paragraph 10 of the Statement of Claim incorrectly states that “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 consumers.” Ontario’s position is that the federal carbon tax will increase the cost of living for Ontario households and businesses through higher prices for energy used for heating (e.g., natural gas) and transportation (e.g., gasoline, diesel) and will increase the cost of energy for colleges, universities, hospitals, and nursing and seniors’ care homes. Ontario also takes the position that the Province has already reduced emissions by 22 per cent since 2005 and has a plan to meet its target of 30 per cent by 2030 without imposing a

carbon tax on fuels sold in the province. Finally, Ontario's position with respect to the constitutional validity of the federal *GGPPA* is set out above at paragraph 7. In any event, the Defendant notes that Ontario's position on the policy merits or the legal validity of the federal carbon tax is irrelevant to the issues raised in this action.

The Federal Carbon Tax Transparency Act, 2019

9. On May 29, 2019, the *Federal Carbon Tax Transparency Act, 2019*, SO 2019, c 7, Sch 23 ("the *FCTTA*") received Royal Assent. The statute was proclaimed in force on August 30, 2019.
10. Section 2 of the *FCTTA* provides that 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 obtain from the Minister copies of the prescribed notice with respect to the price of gasoline sold in Ontario and ensure that the notice is affixed to each gasoline pump at the retail outlet in such manner as may be prescribed. This obligation does not apply with respect to a retail outlet "located on a reserve, as defined in the *Indian Act (Canada)*" or "in an Indian Settlement located on Crown land, the Indian inhabitants of which are treated by Indigenous Services Canada in the same manner as Indians residing on a reserve."
11. Subsection 3(1) of the *FCTTA* provides that "Any person authorized by the Minister for the purpose of this section may at all reasonable times enter into any retail outlet with respect to which subsection 2 (1) applies and inspect or examine the gasoline pumps at the retail outlet for the purpose of determining compliance with this Act."

12. Subsection 4(1) of the *FCTTA* provides that every person who contravenes subsection 2(1) of the Act is guilty of an offence and sets out maximum penalties to which an individual or corporation may be liable on conviction. Pursuant to the *Provincial Offences Act* and rules for the Ontario Court of Justice, on August 28, 2019, the Chief Justice of the Ontario Court of Justice established set fines of \$150 per day for an offence under subsection 4(1).
13. Section 5 of the *FCTTA* provides that the Lieutenant Governor in Council may make regulations for the purpose of carrying out the provisions of the Act, including prescribing anything that may be prescribed under the Act, and providing for time limits within which the requirements of the Act must be complied with. Subsection 5(2) further provides that the notice prescribed under the Act shall set out information with respect to the effect of the charge referred to in subsection 17(1) of the *GGPPA* on the price of gasoline sold in Ontario, which may include information as estimated or otherwise determined by the Minister, and 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.
14. Ontario Regulation 275/19 under the *FCTTA* identifies the prescribed notice and sets certain requirements about how it should be affixed to gasoline pumps. The prescribed notice sets out the amount payable under the *GGPPA* per litre of gasoline purchased in Ontario and displays the Ontario government logo. Readers who wish to “Find out more about taxes on gas” are directed to www.ontario.ca/carbontax. This webpage identifies the various impacts of the federal *GGPPA* on Ontario families, businesses and public services, summarizes Ontario’s environment plan, and provides a link for readers to learn more about motor fuel prices in Ontario (www.ontario.ca/page/motor-fuel-prices). On that webpage, Ontario

reports average weekly motor fuel prices, sets out the components that go into the pump price of regular, unleaded gasoline, explains the impact of the federal carbon tax, compares wholesale prices of gasoline in Toronto to the New York Harbor (a common industry benchmark) and provides an international comparison of the price of gasoline.

The Plaintiff has no standing

15. The Plaintiff does not have standing to bring this action. The Plaintiff is not a 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. Accordingly, the Plaintiff is not directly affected by ss. 2, 4 and 5 of the *FCTTA*.
16. The Plaintiff has not pleaded that it seeks public interest standing, and in any event has pleaded no facts to establish that the court should in its discretion grant it public interest standing. Nor has the Plaintiff pleaded an adequate factual basis to decide the claim. This action is really a private reference and should be dismissed for that reason alone.

No Charter breach

17. In the alternative, the Defendant expressly denies that ss. 2, 4 and 5 of the *FCTTA* (“the challenged provisions”) infringe section 2(b) of the *Charter* and puts the Plaintiff to the strict proof thereof.
18. The Statement of Claim fails to disclose an adequate factual foundation for the claim that the challenged provisions of the *FCTTA* infringe anyone’s rights under s. 2(b) of the *Charter*.
19. The challenged provisions of the *FCTTA* do not in purpose or effect limit the ability of gasoline retailers or anyone else to express any message. Nor do the challenged provisions

of the *FCTTA* compel anyone to express political speech. The Defendant expressly denies the allegation (at paragraph 16 of the Statement of Claim) that the *FCTTA* “legislatively requires gas station owners to express the defendants’ position on the Carbon Tax”. While gasoline retailers are required to display a notice that is attributed to the Government of Ontario that sets out information with respect to the effect of the charge referred to in subsection 17(1) of the *GGPPA* on the price of gasoline sold in Ontario, gasoline retailers are not required by the *FCTTA* to express or adopt any position of the Government of Ontario.

20. The *FCTTA* furthers the purposes of freedom of expression, which include seeking and attaining truth and participating in social and political decision-making, 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*. Information about the effect of this charge on the price of gasoline sold in Ontario is relevant and important information for gasoline consumers to receive in the place and at the time when they are purchasing gasoline.
21. In the alternative, if the challenged provisions of the *FCTTA* infringe s. 2(b) of the *Charter*, which is denied, the Defendant pleads that they constitute a reasonable limit on freedom of expression that is justified under section 1 of the *Charter*. Promoting informed consumer choice and transparency to consumers of gasoline on the effect of the charge referred to in subsection 17(1) of the *GGPPA* on the price of gasoline sold in Ontario are pressing and substantial objectives. Providing information to consumers of gasoline at gasoline pumps on the effect of the charge referred to in subsection 17(1) of the *GGPPA* on the price of gasoline sold in Ontario is rationally connected to these objectives. The challenged provisions of the

FCTTA go no further than reasonably necessary in meeting the Act's objectives. The salutary effects of promoting informed consumer choice and transparency on the effect of the charge referred to in subsection 17(1) of the *GGPPA* on the price of gasoline sold in Ontario are not disproportionate to any deleterious effect on gasoline retailers.

22. The Defendant respectfully requests that the Plaintiff's claim be dismissed with costs.

October 25, 2019

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