

Broad support for new Canada climate law in upcoming Ford judicial challenge

(April 14, 2019) - The Ontario Court of Appeal has scheduled four days, starting in mid-April, to address Ontario Premier Doug Ford's constitutional challenge of Canada's new *Greenhouse Gas Pollution Pricing Act* (GGPPA).

The Act took effect April 1.

It aims to ensure effective action is taken across Canada to reduce greenhouse gas emissions (GHGs) to help stop climate chaos resulting from the earth warming more than 1.5 degrees C.

The Ford government's November 2018 court filing complains that the federal law "wrongly puts a price on carbon" and asserts Ottawa lacks constitutional jurisdiction to do that. Premier Ford stated, "A carbon tax will make no difference to the environment", and "It's just another cash grab."

However, in February 2019, Ontario proposed a plan to do exactly that. Despite its flip-flop, Ontario has not withdrawn its challenge to the federal law

The following summarizes key court submissions from other interveners supporting the federal law. (The full written submission (factum) of all parties can be found [here](#)):

- The non-partisan Ecofiscal Commission contends that "Global climate change, caused by GHG emissions, is the quintessential example of a serious, international environmental problem. If it is not a matter of National Concern, it is difficult to imagine what kind of trans-boundary pollution problem ever would be." Notably, the Ecofiscal commissioners include a former deputy minister of finance, Saskatchewan, a former senior vice-president and chief economist of the TD Bank, and the senior vice-president and chief economist, Conference Board of Canada. Current and former advisory board members include former prime minister Paul Martin, Preston Manning, former leader of the Official Opposition in Parliament, former B.C. premier Gordon Campbell, Steve Williams, the president and CEO, Suncor Energy, and Jim Dinning, former Alberta provincial treasurer.
- The Canadian Public Health Association (CPHA) states, "Climate change, caused by greenhouse gas emissions, is the gravest global public health threat of the 21st century." The CPHA is a widely respected, independent, non-profit, non-governmental organization of health professionals focused exclusively on public health. Since the early 1990s, CPHA has been a leader in recognizing and studying the threat climate change poses to Canadian public health.
- The Intergenerational Climate Coalition, a national alliance of six non-profit organizations concerned that "climate change is the greatest threat to the health and environmental well-being of youth and future generations" and that "this group will bear the heaviest impacts and burdens from climate change," submits that, "For Canadian children, climate change is already an emergency." It submits that "No jurisdiction, federal or provincial, should be able to use the constitutional division of powers to defeat other constitutional commitments to younger Canadians and future generations."
- The B.C. government and two major Quebec environmental organizations supporting the federal law emphasize the damages that could be suffered from climate change and that the omission of one province to control GHGs could result in grave implications on other provinces and the national interest. British Columbia focuses on the environmental and economic damages it has suffered and will suffer. And despite a stereotype to the effect that Quebec residents generally favour a restricted interpretation of federal powers, *Équiterre* and the *Centre Québécois du droit de l'environnement* support this federal law as its focus is not general environmental protection, but the

establishment of national standards for GHG emissions.

- The International Trading Emissions Association (ITEA) supports the GGPPA, contending that it “imposes a valid regulatory charge, [and] is consistent with international treaties that the federal government has validly entered into.” ITEA is a non-profit organization with over 150 business and industry members that include major Canadian and international carbon producers (e.g. Shell, Chevron, BP, Suncor, Total) and utilities emitting greenhouse gases (including Ontario Power Generation, TransCanada, Enbridge, Capital Power and ATCO). Many of IETA’s members will be directly regulated by the federal *Greenhouse Gas Pollution Pricing Act* and provincial carbon pricing regimes, IETA is one of the only interveners with members including regulated emitters. Other groups that have supported pollution pricing in general and with different caveats include the Canadian Business Council, the Chamber of Commerce of Canada and the Carbon Pricing Leadership Coalition, with the latter counting key business actors as partners, such as Shell Canada, Ontario Power Generation and TransCanada Corporation.
- A number of First Nations also defend the validity of the GGPPA. As the United Chiefs and Councils of Mniidoo Mnising point out, their interest in this litigation is particularly important, as they “bear a much greater brunt of the harm caused by climate change, and experience it far sooner than the average Canadian.” The Assembly of First Nations and the Athabasca Chipewyan First Nation call for the court to “interpret[s] decades-old case law on the POGG” in the light of the “nation” in question not simply being Canada, “but also legally-recognized First Nations.” Both believe doing so is consistent with the living tree character of the Constitution and necessary for the reconciliation of First Nations interests.
- The David Suzuki Foundation raises environmental, economic and international concerns, references why economic impacts from climate change are severe and highlights the threats it poses to international security and trade relations, including NATO’s 2017 warning that climate change could be a factor in “triggering violent conflicts” and that “[t]he impact of climate change on water supplies alone could constitute a global emergency.”

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