K4.1

EB-2011-0242
EB-2011-0283

IN THE MATTER OF the Ontario Energy Board Act, 1998, S.O. 1998, c. 15, Schedule B; and in particular section 36 (2) thereof;

AND IN THE MATTER OF an application by Enbridge Gas Distribution Inc. for an Order or Orders approving and setting the cost consequences associated with the purchase of Ontario biomethane by Enbridge Gas Distribution Inc.;

AND IN THE MATTER OF an application by Union Gas Limited for an Order or Orders approving and setting the cost consequences associated with the purchase of Ontario biomethane by Union Gas Limited.

MATERIALS RELIED UPON BY
ENBRIDGE GAS DISTRIBUTION INC.
FOR ARGUMENT IN CHIEF
(IN ADDITION TO EXHIBIT KP1.1)

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TABLE OF CONTENTS

proceedings, an owner of retail premises having an area more than 6,000 sq. ft. is entitled to a "minor variance" exempting him from the loading space provision; this issue is not removed from their jurisdiction solely because the effect of the variance is total exemption. Similarly, to take another example, in the case of side or rear yard set-back requirements, the fact the exemption sought is the full elimination of the set-back distance does not of necessity mean that the variance is not minor and must be beyond the jurisdiction of the committee and the Board. With the multitude of by-laws covered by s. 42(1) and the number of details they contain, there must be many instances where full exemption can properly be considered no more than a minor variance. It is, as I have said, for the committee and Board to make that determination.

Section 42 was enacted to provide a more expeditious and less cumbersome procedure than that required to effect a by-law amendment: *R. v. London Committee of Adjustment, Ex p. Weinstein*, [1960] O.R. 225, 23 D.L.R. (2d) 175 *sub nom. Re City of London By-law; Western Tire & Auto Supply Ltd. and Weinstein* (C.A.). The owners in this case are entitled to have their application determined under the procedure of s. 42 and not required, as suggested, to seek relief from City Council by amendment to the zoning by-law unless the Board determines if it does on the merits of the matter that the exemption sought is not, as the Committee of Adjustment found, a minor variance.

In sum, the Board erred in law in concluding it was without jurisdiction in respect to the variance in question. As a result it improperly declined to exercise its statutory powers under the *Planning Act*. The appeal must therefore be allowed and the matter remitted to the Municipal Board for decision. Costs of the appeal and the application for leave to appeal will be paid by the respondent.

Appeal allowed.

[HIGH COURT OF JUSTICE]
DIVISIONAL COURT

Union Gas Ltd. v. Township of Dawn
Tecumseh Gas Storage Ltd. v. Township of Dawn

KEITH, MALONEY AND DONOHUE, JJ. 22ND FEBRUARY 1977.

Municipal law — By-laws — Township passing comprehensive zoning by-law — Approved by Ontario Municipal Board — One section of by-law dealing with location of gas pipelines — Whether by-law intra vires township — Whether Ontario Municipal Board had jurisdiction to approve by-law — Planning Act, R.S.O. 1970, c. 349, s. 35 — Ontario Energy Board Act, R.S.O. 1970, c. 312.

Planning legislation — Zoning by-laws — Township passing comprehensive

by-law — Approved by Ontario Municipal Board — One section of by-law dealing with location of gas pipelines — Whether by-law intra vires township — Whether Ontario Municipal Board had jurisdiction to approve by-law — Planning Act, R.S.O. 1970, c. 349, s. 35 — Ontario Energy Board Act, R.S.O. 1970, c. 312.

In accordance with the powers given to municipal councils by s. 35 of the *Planning Act*, R.S.O. 1970, c. 349, an agricultural township in south-western Ontario passed a comprehensive zoning by-law which was later amended. Both by-laws came before the Ontario Municipal Board for approval and were approved. A particular section of the zoning by-law, as amended, dealt with the locations in which, *inter alia*, gas pipelines could be constructed within the municipality. On appeal by two gas companies from the Municipal Board's approval of this section of the by-law, *held*, the appeal should be allowed. The by-law was *ultra vires* the municipality and the Municipal Board, therefore, was without jurisdiction to approve it.

The local problems of the township were insignificant when viewed in the perspective of the need for energy to be supplied to millions of residents of Ontario beyond the township borders. A potential not only for chaos but for the total frustration of any plan to serve this need would be created if by reason of powers vested in each municipality by the *Planning Act*, each municipality were able to enact by-laws controlling gas transmission lines to suit what might be conceived to be local wishes. The *Ontario Energy Board Act*, R.S.O. 1970, c. 312, as amended, makes it clear that all matters relating or incidental to the production, distribution, transmission or storage of natural gas, including the setting of rates, location of lines and appurtenances, expropriation of necessary lands and easements are under the exclusive jurisdiction of the Ontario Energy Board and are not subject to legislative authority by municipal councils under the *Planning Act*. These are all matters that are to be considered in the light of the general public interest and not local or parochial interests.

Furthermore, the maxim *generalia specialibus non derogant* applied. The Legislature intended to vest in the Ontario Energy Board the widest powers to control the supply and distribution of natural gas to the people of Ontario "in the public interest" and this must be classified as special legislation. The *Planning Act*, on the other hand, is of a general nature and the powers granted to municipalities to legislate with respect to land use under s. 35 of that Act must always be read as being subject to special legislation such as is contained in the *Ontario Energy Board Act*.

[*Campbell-Bennett Ltd. v. Comstock Midwestern Ltd. and Trans Mountain Oil Pipe Line Co.*, [1954] S.C.R. 207, [1954] 3 D.L.R. 481, 71 C.R.T.C. 291, apld; *City of Ottawa v. Town of Eastview et al.*, [1941] S.C.R. 448, [1941] 4 D.L.R. 65, 53 C.R.T.C. 193, refd to]

APPEAL from a decision of the Ontario Municipal Board approving two municipal zoning by-laws.

J. J. Robinette, Q.C., and *L. G. O'Connor*, Q.C., for appellant, Union Gas Limited.

P. Y. Atkinson, for appellant, Tecumseh Gas Storage Limited.

W. B. Williston, Q.C., and *J. A. Campion*, for respondent, Township of Dawn.

T. H. Wickett, for Ontario Energy Board.

The judgment of the Court was delivered by

KEITH, J.:—Pursuant to leave granted by this Court on November 24, 1975, upon application made in accordance with s.

95(1) of the *Ontario Municipal Board Act*, R.S.O. 1970, c. 323, the following questions are submitted to this Court for its opinion:

(a) Is section 4.2.3. of By-law 40 of the Township of Dawn as amended, ultra vires of the respondent municipality?

(b) Is the Ontario Municipal Board therefore without jurisdiction to approve the respondent's By-law 40 as amended including section 4.2.3. thereof?

The Township of Dawn in the County of Lambton, a rural agricultural township in south western Ontario, passed its first comprehensive zoning by-law on June 18, 1973 (By-law 40), and amending By-law 52 on September 3, 1974.

These two by-laws came before the Ontario Municipal Board on April 16 and 24, 1975, for approval. In addition to the parties appearing in this Court, two other parties interested in the effect of these by-laws were represented at the Municipal Board hearings, but the Ontario Energy Board, one of the most vitally interested parties, inexplicably was not.

The relevant sections of the by-law, as amended, read as follows:

1.1 *Section 1 — Introduction*

Whereas the Council has authority to regulate the use and nature of land, buildings and structures in the Township of Dawn by by-law subject to the approval of the Ontario Municipal Board and deems it advisable to do so.

1.2 Now therefore the Council of the Corporation of the Township of Dawn enacts as follows:

Title

2.1 This by-law shall be known as the "Zoning By-law" of the Township of Dawn.

Penalty

3.3.1. Every person who contravenes by-law is guilty of an offence and liable upon conviction to fine of not more than three hundred (300) dollars for each offence, exclusive of costs. Every such fine is recoverable under the Summary Convictions Act, all the provisions of which apply except that the imprisonment may be for a term of not more than twenty-one (21) days.

3.3.2. Where a person, guilty of an offence under this by-law has been directed to remedy any violation and is in default of doing such matter or thing required, then such matter or thing may be done at his expense, by the Corporation of the Township of Dawn and the Corporation may recover the expense incurred in doing it by action or the same may be recovered in like manner as municipal taxes.

Section 4 — General Use and Zone Regulations

4.1 Uses Permitted.

4.1.1. No land, building or structure shall be used or occupied and no building or structure or part thereof shall be erected or altered except as permitted by the provisions of this by-law.

4.2.3 Except as limited herein nothing in this by-law shall prevent the use of any land as a right-of-way, easement or corridor for any oil, gas, brine or other liquid product pipeline and appurtenances thereto, but no appurtenances in the form of a metering, booster, dryer, stipper or pumping station, shall be constructed closer than 500 feet to any adjacent residential or commercial zone or rural residence, except as otherwise provided. All transmission pipelines to be installed from or to a production, treatment or storage site shall be constructed

from or to such site to and along, in or upon a right-of-way, easement or corridor located as follows:

(a) running northerly or southerly within 100 feet perpendicular distance from the centre line dividing the east and west halves of a concession lot;

(b) running easterly and westerly within 100 feet perpendicular distance from a concession lot line not being a township, county or provincial road or highway;

(c) across, but not along a township, county or provincial road or highway.

Nothing herein shall prevent the location of a local distribution gas service line upon any street, road or highway.

On May 20, 1975, the Ontario Municipal Board released its decision approving of By-law 40 as amended. The reasons are devoted almost exclusively to s. 4.2.3 as amended and the objections of the appellants thereto. To fully understand the approach taken by the Municipal Board, the following extracts from these reasons are quoted [4 O.M.B.R. 462 at pp. 463-6]:

> The Township consists of flat agricultural land with soil rated in the Canada Land Survey as A2. The Board was advised by the representative of the Ministry of Agriculture and Food that the soil is of the Brookstone clay type which requires particular attention to drainage because the land is so flat and that this was the reason it was rated A2 rather than A1. The soil is very productive if properly drained and worked. As drainage is installed the soil responds to cash crops such as corn and soya beans. Drainage is accomplished generally by a grid system of tile drainage lines approximately 40 ft. apart throughout the whole of the Township. These feed into municipal drains which generally follow lot and concession lines and eventually drain to the south-west into the Sydenham River. An example of this method of drainage in the Township is shown on ex. 9, filed. This also indicates the position of the Union Gas Company pipeline which runs in a diagonal direction across the tile drains referred to above. Because the pipeline runs across the drains, a header line is required to direct the flow of the water into the municipal drain.
>
> The evidence indicates that in respect of the pipeline installation on a right of way that may be 60 ft. wide or more, and the header line parallel to it, the farmer in using his equipment must gear down each time before crossing these installations rather than continuing in the usual sweep of the farm land. This time-consuming and inconvenient operation is necessary every time the farmer crosses the pipeline easement area. In addition, the evidence clearly indicated that upon excavation for the pipeline, the soil composition is disturbed and impacted so that growth is hampered for several years until the soil is returned to its normal state. The company indicated in evidence that a new method for laying lines and conserving the topsoil for future development had been devised. This may alleviate the problems, but only time will tell.
>
> . . . . .
>
> The Union Gas Limited (hereinafter to be referred to as "the Company") operates in the south-west part of the Province and has important connections with Consumers Gas Company of Toronto and other systems for whom it stores gas in the summer months for delivery in the winter. The relationship of the Union Gas Limited operation to other systems in the Province are well illustrated on ex. 33, filed. The hub of their system is in Dawn Township from which all the distribution and transmission lines radiate. The importance of the Company to the municipality is illustrated by ex. 26 filed, which shows that for the years 1970 to 1974 inclusive, the Company paid taxes which formed a sig-

nificant portion of the total Township levy varying from 24.3% to 30.6% in those years.

The by-law provides that transmission lines are to be laid in corridors 200 ft. wide running along the half lot lines in a north-south direction and along concession lines in an east-west direction, "across but not along a township, county or provincial road or highway", s. 4.2.3.

This corridor concept was the chief source of objection registered by the Company which in evidence indicated that the corridor method of laying their lines would be very costly. This was particularly so when some of the existing lines are now laid in a diagonal direction. When new looping lines are required they are now planned to run generally parallel to the existing lines. If they were to follow the corridors the length of line would be increased, in some cases the diameter of the pipe would have to be greater, and perhaps they might also require additional compression facilities. The additional costs were shown to be large and would result in increased costs to the public.

The Board must weigh the possibility of incurring these increased costs against the need for protecting the farm industry against unnecessary and unplanned disturbance in future years. There was ample evidence to indicate that the need for pipeline installations would increase in the future. There was also evidence to indicate that about 50% of the existing lines are already built in a north-south and east-west direction and that the corridor concept has therefore in fact found practical use in the past (exs. 7 and 27). It was the argument of counsel for the applicant that once the corridors were established the extra cost for looping will not be as significant.

Argument of counsel for the Tecumseh Gas Storage Limited was that the use of land for pipelines was not in fact a use of land as envisaged under s. 35(1)1 of the *Planning Act*, R.S.O. 1970, c. 349. To bolster this argument counsel referred the Board to the case of *Pickering Twp. v. Godfrey*, [1958] O.R. 429, 14 D.L.R. (2d) 520, [1958] O.W.N. 230. The Board finds that the instant case can be distinguished from the quoted case which dealt specifically with the making of a quarry or gravel pit as a "land use". In addition, the Board finds that the use of land for installation of a pipeline fits the definition arrived at in the case above quoted [at p. 437] as meaning: "the employment of the property for enjoyment, revenue or profit without in any way otherwise diminishing or impairing the property itself."

The second major argument of counsel was that the municipality has no jurisdiction to deal with pipeline installation because of the existence of the *Ontario Energy Board Act*, R.S.O. 1970, c. 312, which creates the Ontario Energy Board and gives it jurisdiction to determine the route for a transmission line, production line, distribution line or a station (s. 40(1)). The Board was also referred to s. 57 of the *Ontario Energy Board Act* which reads as follows:

> "57(1) In the event of conflict between this Act and any other general or special Act, this Act prevails.
>
> (2) This Act and the regulations prevail over any by-law passed by a municipality."

In the opinion of the Board the above section provides only for the event of a conflict between the *Ontario Energy Board Act* and any other Act. It does not, nor can it be interpreted to mean that no other Act can be effective. It does not in the opinion of the Board prohibit the municipality from dealing with those matters referred to in s. 35 of the *Planning Act*.

The major considerations of the Ontario Energy Board are not directed towards planning. It is the responsibility and duty of Council to plan for the proper and orderly development of the municipality having regard to the

health, safety, convenience and welfare of the present and future inhabitants of the municipality all within the framework of the *Planning Act*.

The Board is of the opinion that zoning by-laws must provide for all ratepayers a degree of certainty for reasonable stability. This can be accomplished by passing restricted area by-laws for land use on a planning basis with proper and responsible study and public input. The evidence indicates that the municipality has indeed acted in a reasonable and responsible manner to achieve this end. The consideration for the farming community which forms a large proportion of the municipality is a proper and reasonable one. There is no certainty as to where the Ontario Energy Board may finally decide to place the pipelines required by the criteria they have and will develop. They will, however, have the legislative document before them giving the corporate expression of the municipality to indicate where, on the basis of planning considerations, the pipelines should go. The Ontario Energy Board will then, on the basis of its criteria and the evidence heard, be in a position to give its decision on the ultimate route chosen.

In the meantime, the municipality will by legislation inform all its ratepayers where the pipelines should be laid. The farmer will be able to proceed with the least amount of interference both during construction of pipelines on or near his lands and indeed in his everyday work. The pipeline companies will benefit from this as well. With less interference to the farmer there should be fewer difficulties experienced both in the installation of the pipelines and the servicing and maintenance of the pipelines and the tile drain systems.

By-law 40 as amended was enacted by the Council of the respondent in accordance with the powers given to municipal councils by s. 35 of the *Planning Act*, R.S.O. 1970, c. 349. The relevant portions of that section read as follows:

35(1) By-laws may be passed by the councils of municipalities:

1. For prohibiting the use of land, for or except for such purposes as may be set out in the by-law within the municipality or within any defined area or areas or abutting on any defined highway or part of a highway.
2. For prohibiting the erection or use of buildings or structures for or except for such purposes as may be set out in the by-law within the municipality or within any defined area or areas or upon land abutting on any defined highway or part of a highway.

Section 46 of the *Planning Act* is identical with s. 57(1) of the *Ontario Energy Board Act*, R.S.O. 1970, c. 312, quoted in the reasons of the Ontario Municipal Board. Fortunately, s. 46 of the *Planning Act* has no equivalent to s. 57(2) of the *Ontario Energy Board Act* or the Court might well have been forced to assert that its views prevailed over one or other or both of the statutes.

The appellant Union Gas operates an extensive network of natural gas transmission lines throughout south-western Ontario delivering this energy to customers, both wholesale and retail, extending from Windsor on the south-west, to Hamilton and Trafalgar on the east and Goderich and Owen Sound on the north.

It supplies scores of city, town and village municipalities in this extensive and heavily-populated area and its lines traverse 16 counties which contain upwards of 140 township municipalities.

The municipal councils of each of these has the same power under the *Planning Act* to pass zoning by-laws.

The principal source of the supply of natural gas to Union Gas is the Trans-Canada pipeline which enters the southern part of Ontario in Lambton County just south of Sarnia and connects with a major compressor station of Union Gas in the Township of Dawn. There are four other major compressor stations operated by this appellant, one just west of London, another at Trafalgar between Hamilton and Toronto, one near Simcoe and the fourth south of Chatham. These stations are essential to maintain pressure throughout the pipeline network.

In addition, Union Gas lines serve as feeders for companies like the Consumers' Gas Company serving Metropolitan Toronto and another extensive area of Ontario.

In addition, a significant portion of the source of natural gas transmitted by Union Gas, comes from local wells found in southwestern Ontario, a number of which are located in the Township of Dawn.

The company also maintains reserves of gas in natural underground storage fields, some but by no means all of which are also located in the Township of Dawn.

The local wells and the storage fields must all be connected to the distribution lines and the compressor stations.

The second appellant, Tecumseh Gas Storage Limited, is equally affected by the impugned by-law, but no detailed description of its operations was presented to the Court.

I have stressed these points to illustrate firstly how insignificant are the local problems of the Township of Dawn when viewed in the perspective of the need for energy to be supplied to those millions of residents of Ontario beyond the township borders, and to call to mind the potential not only for chaos but the total frustration of any plan to serve this need if by reason of powers vested in each and every municipality by the *Planning Act*, each municipality were able to enact by-laws controlling gas transmission lines to suit what might be conceived to be local wishes. We were informed that other township councils have only delayed enacting their own by-laws pending the outcome of this appeal.

At the conclusion of the argument of this appeal I informed counsel, on behalf of the Court, that the Appeal Book had been endorsed as follows:

> The appeal will be allowed with costs. In view of the importance of the issue, which is raised in this appeal insofar as it relates specifically to the Energy Board's jurisdiction as challenged by a municipal council, and in deference to the lengthy reasons delivered by the Ontario Municipal Board, the Court will in due course, deliver considered reasons which will be the basis of the formal order of the Court.

It is not necessary for my purpose to trace the history and origins of the present *Ontario Energy Board Act* as amended. Reference to s. 58 of the present Act will suffice to show that this industry has developed over many years under provincial legislation. Section 58 reads as follows:

> 58. Every order and decision made under,
>
> (*a*) *The Fuel Supply Act*, being chapter 152 of the Revised Statutes of Ontario, 1950;
>
> (*b*) *The Natural Gas Conservation Act*, being chapter 251 of the Revised Statutes of Ontario, 1950;
>
> (*c*) *The Well Drillers Act*, being chapter 423 of the Revised Statutes of Ontario, 1950;
>
> (*d*) *The Ontario Fuel Board Act, 1954*;
>
> (*e*) *The Ontario Energy Board Act, 1960*;
>
> (*f*) *The Ontario Energy Act*, being chapter 271 of the Revised Statutes of Ontario, 1960; or
>
> (*g*) *The Ontario Energy Board Act, 1964.*
>
> that were in force on the day the Revised Statutes of Ontario, 1970 is proclaimed in force shall be deemed to have been made by the Board under this Act.

Pursuant to s. 2 [am. 1973, c. 55, s. 2] of the Act, the Ontario Energy Board is composed of not less than five members appointed by the Lieutenant-Governor in Council. It has an official seal, and its orders which must be judicially noticed are not subject to the *Regulations Act*, R.S.O. 1970, c. 410.

By s. 14, many of the powers of the Supreme Court of Ontario are vested in this Board "for the due exercise of its jurisdiction".

Section 18 is important having regard to the penalty provisions of the township by-law quoted above. That section reads as follows:

> 18. An order of the Board is a good and sufficient defence to any action or other proceeding brought or taken against any person in so far as the act or omission that is the subject of such action or other proceeding is in accordance with the order.

Section 19 [am. 1973, c. 55, s. 5(1)] vests power in the Board to fix rates and other charges for the sale, transmission, distribution and storage of natural gas.

Under s. 23 [am. *ibid.*, s. 8] the Board is charged with responsibility to issue permits to drill gas wells.

Section 25 prohibits any company in the business of transmitting, distributing or storing gas from disposing of its plant by sale or otherwise without leave, and such leave cannot be granted without, *inter alia*, a public hearing.

Section 30 provides that any order of the Board may be filed with the Registrar of the Supreme Court and is enforceable in the same way as a judgment or order of the Court.

Part II of the Act deals specifically with pipe lines and I quote s.

38(1), s. 39, s. 40(1), (2), (3), (8), (9) and (10), s. 41(1) and (3), and s. 43(1) and (3):

38(1) No person shall construct a transmission line without first obtaining from the Board an order granting leave to construct the transmission line.

. . . . . .

39. Any person may, before he constructs a production line, distribution line or station, apply to the Board for an order granting leave to construct the production line, distribution line or station.

40(1) An applicant for an order granting leave to construct a transmission line, production line, distribution line or a station shall file with his application a map showing the general location of the proposed line or station and the municipalities, highways, railways, utility lines and navigable waters through, under, over, upon or across which the proposed line is to pass.

(2) Notice of the application shall be given by the applicant in such manner as the Board directs and shall be given to the Department of Agriculture and Food, the Department of Municipal Affairs, the Department of Highways and such persons as the Board may direct.

(3) Where an interested person desires to make objection to the application, such objection shall be given in writing to the applicant and filed with the Board within fourteen days after the giving of notice of the application and shall set forth the grounds upon which such objection is based.

. . . . . .

(8) Where after the hearing the Board is of the opinion that the construction of the proposed line or station is in the public interest, it may make an order granting leave to construct the line or station.

(9) Leave to construct the line or station shall not be granted until the applicant satisfies the Board that it has offered or will offer to each landowner an agreement in a form approved by the Board.

(10) Any person to whom the Board has granted leave to construct a line or station, his officers, employees and agents, may enter into or upon any land at the intended location of any part of the line or station and may make such surveys and examinations as are necessary for fixing the site of the line or station, and, failing agreement, any damages resulting therefrom shall be determined in the manner provided in section 42.

41(1) Any person who has leave to construct a line or station under this Part or a predecessor of this Part may apply to the Board for authority to expropriate land for the purposes of the line or station, and the Board shall thereupon set a date for the hearing of such application, and such date shall be not fewer than fourteen days after the date of the application, and upon such application the applicant shall file with the Board a plan and description of the land required, together with the names of all persons having an apparent interest in the land.

. . . . . .

(3) Where after the hearing the Board is of the opinion that the expropriation of the land is in the public interest, it may make an order authorizing the applicant to expropriate the land.

. . . . . .

43(1) Any person who has leave to construct a line may apply to the Board for authority to construct it upon, under or over a highway, utility line or ditch.

. . . . . .

(3) Without any other leave and notwithstanding any other Act, where after the hearing the Board is of the opinion that the construction of the line upon,

under or over a highway, utility line or ditch, as the case may be, is in the public interest, it may make an order authorizing the applicant so to do upon such terms and conditions as it considers proper.

Finally, with respect to the statute itself, it may not be amiss to again quote s. 57:

57(1) In the event of conflict between this Act and any other general or special Act, this Act prevails.

(2) This Act and the regulations prevail over any by-law passed by a municipality.

In my view this statute makes it crystal clear that all matters relating to or incidental to the production, distribution, transmission or storage of natural gas, including the setting of rates, location of lines and appurtenances, expropriation of necessary lands and easements, are under the exclusive jurisdiction of the Ontario Energy Board and are not subject to legislative authority by municipal councils under the *Planning Act*.

These are all matters that are to be considered in the light of the general public interest and not local or parochial interests. The words "in the public interest" which appear, for example, in s. 40(8), s. 41(3) and s. 43(3), which I have quoted, would seem to leave no room for doubt that it is the broad public interest that must be served. In this connection it will be recalled that s. 40(1) speaks of the requirement for filing a general location of proposed lines or stations showing "the municipalities, highways, railways, utility lines and navigable waters through, under, over, upon or across which the proposed line is to pass".

Persons affected must be given notice of any application for an order of the Energy Board and full provision is made for objections to be considered and public hearings held.

In the final analysis, however, it is the Energy Board that is charged with the responsibility of making a decision and issuing an order "in the public interest".

While the result in the case of *Campbell-Bennett Ltd. v. Comstock Midwestern Ltd. and Trans Mountain Oil Pipe Line Co.*, [1954] S.C.R. 207, [1954] 3 D.L.R. 481, 71 C.R.T.C. 291, might perhaps be different today, having regard to the facts of that case and subsequent federal legislation, the principles enunciated are valid and applicable to the case before this Court.

In the *Campbell-Bennett* case, the defendant Trans Mountain Pipe Line was incorporated by a special Act of the Parliament of Canada to construct interprovincial pipe lines. During the course of construction of a pipe line from Acheson, Alberta to Burnaby, British Columbia, some work was done in British Columbia by the plaintiff for which it claimed to be entitled to a mechanics' lien on the works in British Columbia, and to enforce that lien under the

British Columbia *Mechanics' Lien Act* by seizing and selling a portion of the pipe line.

At p. 212 S.C.R., p. 486 D.L.R., Kerwin, J. (as he then was), on behalf of himself and Fauteux, J. (as he then was), said:

> The result of an order for the sale of that part of Trans Mountain's oil pipe line in the County of Yale would be to break up and sell the pipe line piecemeal, and a provincial legislature may not legally authorize such a result.

Then at pp. 213-5 S.C.R., pp. 487-9 D.L.R., Rand, J., on behalf of himself and the other three members of the Court, said:

> The respondent, Trans Mountain Oil Pipe Line Company, was incorporated by Dominion statute, 15 Geo. VI, c. 93. It was invested with all the "powers, privileges and immunities conferred by" and, except as to provisions contained in the statute which conflicted with them, was made subject to all the "limitations, liabilities and provisions of any general legislation relating to pipe lines for the transportation of oil" enacted by Parliament. Within that framework, it was empowered to construct or otherwise acquire, operate and maintain interprovincial and international pipe lines with all their appurtenances and accessories for the transportation of oil.
>
> The *Pipe Lines Act*, R.S.C. 1952, c. 211, enacted originally in 1949, is general legislation regulating oil and gas pipe lines and is applicable to the company. By its provisions the company may take land or other property necessary for the construction, operation or maintenance of its pipe lines, may transport oil and may fix tools therefor. The location of its lines must be approved by the Board of Transport Commissioners and its powers of expropriation are those provided by the *Railway Act*. By s. 38 the Board may declare a company to be a common carrier of oil and all matters relating to traffic, tools or tariffs become subject to its regulation. S. 10 provides that a company shall not sell or otherwise dispose of any part of its company pipe line, that is, its line held subject to the authority of Parliament, nor purchase any pipe line for oil transportation purposes, nor enter into any agreement for amalgamation, nor abandon the operation of a company line, without leave of the Board; and generally the undertaking is placed under the Board's regulatory control.
>
> Is such a company pipe line so far amenable to provincial law as to subject it to statutory mechanics' liens? The line here extends from a point in Alberta to Burnaby in British Columbia. That it is a work and undertaking within the exclusive jurisdiction of Parliament is now past controversy: *Winner v. S.M.T. (Eastern) Limited*, [1951] S.C.R. 887, affirmed, with a modification not material to this question, by the Judicial Committee but as yet unreported. The lien claimed is confined to that portion of the line within the County of Yale, British Columbia. What is proposed is that a lien attaches to that portion of the right of way on which the work is done, however small it may be, or wherever it may be situated, and that the land may be sold to realize the claim. In other words, an interprovincial or international work of this nature can be disposed of by piecemeal sale to different persons and its undertaking thus effectually dismembered.
>
> In the light of the statutory provisions creating and governing the company and its undertaking, it would seem to be sufficient to state such consequences to answer the proposition. The undertaking is one and entire and only with the approval of the Board can the whole or, I should say, a severable unit, be transferred or the operation abandoned. Apart from any question of Dominion or Provincial powers and in the absence of clear statutory authority, there could be no such destruction by means of any mode of execution or its equivalent. From the earliest appearance of such questions it has been pointed out that the

creation of a public service corporation commits a public franchise only to those named and that a sale under execution of property to which the franchise is annexed, since it cannot carry with it the franchise, is incompatible with the purpose of the statute and incompetent under the general law. Statutory provisions, such as s. 152 of the *Railway Act*, R.S.C. (1952) c. 234, have modified the application of the rule, but the sale contemplated by s. 10 of the *Pipe Lines Act* is sale by the company, not one arising under the provisions of law and in a proceeding *in invitum*. The general principle was stated by Sir Hugh M. Cairns, L.J. in *Gardner v. London, Chatham and Dover Railway* (1867), L.R. 2 Ch. 201 at p. 212:—

> "When Parliament, acting for the public interest, authorizes the construction and maintenance of a railway, both as a highway for the public, and as a road on which the company may themselves become carriers of passengers and goods, it confers powers and imposes duties and responsibilities of the largest and most important kind, and it confers and imposes them upon the company which Parliament has before it, and upon no other body of persons. These powers must be executed and these duties discharged by the company. They cannot be delegated or transferred."

In the same judgment and speaking of the effect of an authorized mortgage of the "undertaking" he said:—

> "The living and going concern thus created by the Legislature must not, under a contract pledging it as security, be destroyed, broken up, or annihilated. The tolls and sums of money *ejusdem generis*—that is to say, the earnings of the undertaking—must be made available to satisfy the mortgage; but, in my opinion, the mortgagees cannot; under their mortgages, or as mortgagees—by seizing, or calling on this Court to seize, the capital, or the lands, or the proceeds of sales of land, or the stock of the undertaking—either prevent its completion, or reduce it into its original elements when it has been completed."

Several further and compelling submissions were made to the Court on behalf of the appellants, but having regard to the first submission which is irresistible and of fundamental importance, I do not think it necessary to deal with all of the arguments advanced.

Reference should be made, however, to two of them. First, attention should be directed to "An Act to regulate the Exploration and Drilling for, and the Production and Storage of Oil and Gas", 1971 (Ont.), c. 94, commonly referred to as the *Petroleum Resources Act*.

The objects of this legislation can be readily understood by reference to s. 17(1) of the statute, which reads as follows:

> 17(1) The Lieutenant Governor in Council may make regulations,
>
> (*a*) for the conservation of oil or gas;
>
> (*b*) prescribing areas where drilling for oil or gas is prohibited;
>
> (*c*) prescribing the terms and conditions of oil and gas production leases and gas storage leases or any part thereof, excluding those relating to Crown lands, and providing for the making of statements or reports thereon;
>
> (*d*) regulating the location and spacing of wells;
>
> (*e*) providing for the establishment and designation of spacing units and regulating the location of wells in spacing units and requiring the joining of the various interests within a spacing unit or pool;

(*f*) prescribing the methods, equipment and materials to be used in boring, drilling, completing, servicing, plugging or operating wells;

(*g*) requiring operators to preserve and furnish to the Department drilling and production samples and cores;

(*h*) requiring operators to furnish to the Department reports, returns and other information;

(*i*) requiring dry or unplugged wells to be plugged or replugged, and prescribing the methods, equipment and materials to be used in plugging or replugging wells;

(*j*) regulating the use of wells and the use of the subsurface for the disposal of brine produced in association with oil and gas drilling and production operations.

The importance of this Act is reflected in s. 18 which reads as follows:

18(1) In the event of conflict between this Act and any other general or special Act, this Act, subject only to *The Ontario Energy Board Act* [1964], prevails.

(2) This Act and the regulations prevail over any municipal by-law.

Similarly, although it was not referred to in argument, the *Energy Act*, R.S.O. 1970, c. 148 [since repealed by 1971, Vol. 2, c. 44, s. 32, and superseded by the *Energy Act, 1971*, and the *Petroleum Resources Act, 1971*], deals with other aspects of the natural gas and oil industry. The objects of the legislation are set out in s. 12(1) which I need not quote, but again s. 13 of this Act is identical in its wording to s. 18 of the *Petroleum Resources Act, 1971*, quoted above.

The second of the additional submissions to which reference should be made is based on a cardinal rule for the interpretation of statutes and expressed in the maxim *generalia specialibus non derogant*. For a discussion of the effect of this rule I will only refer to the case of *City of Ottawa v. Town of Eastview et al.*, [1941] S.C.R. 448 commencing at p. 461 [1941] 4 D.L.R. 65 at p. 75, 53 C.R.T.C. 193, and to the Dictionary of English Law (Earl Jowitt), at p. 862.

In the case before this Court, it is clear that the Legislature intended to vest in the Ontario Energy Board the widest powers to control the supply and distribution of natural gas to the people of Ontario "in the public interest" and hence must be classified as special legislation.

The *Planning Act*, on the other hand, is of a general nature and the powers granted to municipalities to legislate with respect to land use under s. 35 of that Act must always be read as being subject to special legislation such as in contained, for example, in the *Ontario Energy Board Act*, the *Energy Act* and the *Petroleum Resources Act, 1971*.

In the result, therefore, and in response to the questions with re-

spect to which leave to appeal was granted, this Court certifies to the Ontario Municipal Board:

(a) Section 4.2.3. of By-law 40 as amended, of the Township of Dawn is ultra vires the said municipality, and

(b) The Ontario Municipal Board therefore is without jurisdiction to approve the said by-law as amended in its present form by reason of section 4.2.3. thereof.

This Court further certifies that should the Ontario Municipal Board see fit to exercise the powers vested in it by s. 87 of the *Ontario Municipal Board Act*, the said By-law 40, as amended, may be approved after deleting from s. 4.2.3. the words "Except as limited herein" at the commencement of the said section and all the words after the word "thereto" in the fourth line of the said by-law as printed down to and including the words "road or highway" in subcl. (c) of the said s. 4.2.3., so that s. 4.2.3. as so approved would read:

> Nothing in this by-law shall prevent the use of any land as a right-of-way, easement or corridor for any oil, gas, brine or other liquid product pipeline and appurtenances thereto.
>
> Nothing herein shall prevent the location of a local distribution gas service line upon any street, road or highway.

The appellants and the Ontario Energy Board are entitled to their costs of this appeal.

Appeal allowed.

[COUNTY COURT]
JUDICIAL DISTRICT OF YORK

Box v. Ergen

FERGUSON, Co. Ct. J. 23RD DECEMBER 1976.

Practice — Writ of summons — Substituted service — Application to set aside order permitting substituted service on defendant's liability insurer — Insurer unable to communicate with defendant — Order for substituted service set aside.

[*Saraceni v. Rechenberg*, [1971] 2 O.R. 735; affd *ibid.* at p. 738, distd; *Starosta v. Simpson et al.* (1974), 6 O.R. (2d) 384, discd; *Sakalo v. Tassotti, Lori et al.*, [1963] 2 O.R. 537, 40 D.L.R. (2d) 294, refd to]

APPLICATION to set aside an order of Henry, J., permitting substituted service of the writ upon the defendant's liability insurer.

P. Slocombe, for plaintiff.

S. C. Tessis, for applicant, Royal Insurance Company.

FERGUSON, Co. Ct. J.:—This is a motion to set aside the order of His Honour Judge Henry dated September 24, 1976, whereby it was ordered that substituted service of the writ of summons be affected on the defendant by addressing the writ to the defendant

Green Energy Act, 2009

S.O. 2009, CHAPTER 12
SCHEDULE A

Consolidation Period: From June 6, 2011 to the e-Laws currency date.

Last amendment: 2011, c. 9, Sched. 27, s. 27.

Preamble

The Government of Ontario is committed to fostering the growth of renewable energy projects, which use cleaner sources of energy, and to removing barriers to and promoting opportunities for renewable energy projects and to promoting a green economy.

The Government of Ontario is committed to ensuring that the Government of Ontario and the broader public sector, including government-funded institutions, conserve energy and use energy efficiently in conducting their affairs.

The Government of Ontario is committed to promoting and expanding energy conservation by all Ontarians and to encouraging all Ontarians to use energy efficiently.

PART I
INTERPRETATION AND GENERAL APPLICATION

Definitions and interpretation

Definitions

1. (1) In this Act,

"distribution system" has the same meaning as in the *Electricity Act, 1998*; ("réseau de distribution")

"generation facility" has the same meaning as in the *Electricity Act, 1998*; ("installation de production")

"Minister" means the Minister of Energy or any other member of the Executive Council to whom responsibility for the administration of this Act is assigned or transferred under the *Executive Council Act*; ("ministre")

"Ministry" means the ministry of the Minister; ("ministère")

"prescribed" means prescribed by a regulation made under this Act; ("prescrit")

"public agency" means a ministry of the Government of Ontario or an entity, including a municipality, or class of entities that is prescribed as a public agency; ("organisme public")

"regulation" means a regulation made under this Act; ("règlement")

"renewable energy generation facility" has the same meaning as in the *Electricity Act, 1998*; ("installation de production d'énergie renouvelable")

"renewable energy project" means the construction, installation, use, operation, changing or retiring of a renewable energy generation facility; ("projet d'énergie renouvelable")

"renewable energy source" means an energy source that is renewed by natural processes and includes wind, water, biomass, biogas, biofuel, solar energy, geothermal energy, tidal forces and such other energy sources as may be prescribed by the regulations, but only if the energy source satisfies such criteria as may be prescribed by the regulations for that energy source; ("source d'énergie renouvelable")

"renewable energy testing facility" means devices or structures to be used to gather information about natural conditions at the location of the structures or devices and related infrastructure and that meet such criteria as may be prescribed by the regulations; ("installation d'évaluation du potentiel en

énergie renouvelable")

"renewable energy testing project" means the construction, installation, use, operation, changing or retiring of a renewable energy testing facility; ("projet d'évaluation du potentiel en énergie renouvelable")

"transmission system" has the same meaning as in the *Electricity Act, 1998*. ("réseau de transport") 2009, c. 12, Sched. A, s. 1 (1); 2011, c. 9, Sched. 27, s. 27.

Interpretation

(2) This Act shall be interpreted in a manner that is consistent with section 35 of the *Constitution Act, 1982* and with the duty to consult aboriginal peoples. 2009, c. 12, Sched. A, s. 1 (2).

Administration, community consultation

2. This Act shall be administered in a manner that promotes community consultation. 2009, c. 12, Sched. A, s. 2.

Government facilities, guiding principles

10. (1) In constructing, acquiring, operating and managing government facilities, the Government of Ontario shall be guided by the following principles:

1. Clear and transparent reporting of,
   i. energy use associated with government facilities,
   ii. the amount of greenhouse gas emissions associated with government facilities, and
   iii. water use associated with government facilities.
2. Planning and designing government facilities to ensure the efficient use of energy and water.
3. Making environmentally and financially responsible investments in government facilities.
4. Using renewable energy sources to provide energy for government facilities.
5. Using technologies, services and practices that promote the efficient use of water and reduce negative impacts on Ontario's water resources. 2009, c. 12, Sched. A, s. 10 (1); 2010, c. 19, Sched. 4, s. 1 (1, 2).

Directives

(2) The Minister may, with the approval of the Lieutenant Governor in Council, issue directives,

(a) requiring the ministries responsible for the government facilities that the Minister specifies in the directive to report to the Minister, at such time and in such manner as may be provided for in the directive, on energy consumption, greenhouse gas emissions and water use associated with the facilities;

(b) establishing energy, water conservation and environmental standards which must be met as minimum standards for new construction or major renovations for government facilities; and

(c) specifying such other requirements as the Minister considers appropriate relating to energy conservation, energy efficiency, water conservation, the adoption of renewable energy technologies, and the adoption of technologies and services that promote the efficient use of water and reduce negative impacts on Ontario's water resources. 2009, c. 12, Sched. A, s. 10 (2); 2010, c. 19, Sched. 4, s. 1 (3).

Same

(3) In a directive, the Minister may,

(a) designate or specify the government facilities or class of government facilities to which the directive applies and may specify which part of a directive applies to which facility or class of facilities;

(b) specify the content of a report required under clause (2) (a); and

(c) specify the time in which a ministry must provide the report. 2009, c. 12, Sched. A, s. 10 (3); 2010, c. 19, Sched. 4, s. 1 (4).

Publication

(4) Part III of the *Legislation Act, 2006* does not apply to a directive, but the Minister shall ensure that directives are published in *The Ontario Gazette*. 2009, c. 12, Sched. A, s. 10 (4).

Definition

(5) In this section,

"government facilities" means government owned or occupied buildings, properties and facilities or such classes of buildings, properties and facilities as the Minister may by directive designate. 2009, c. 12, Sched. A, s. 10 (5).

Energy Conservation and Demand Management Plans, O Reg 397/11

Current version: in force since Jan 1, 2012

Green Energy Act, 2009

ONTARIO REGULATION 397/11

ENERGY CONSERVATION AND DEMAND MANAGEMENT PLANS

Consolidation Period: From January 1, 2012 to the e-Laws currency date.

No amendments.

This is the English version of a bilingual regulation.

Definitions

1. In this Regulation,

"municipal service board" means,

(a) a municipal service board or joint municipal service board established or continued under the *Municipal Act, 2001*,

(b) a city board or joint city board established or continued under the *City of Toronto Act, 2006*, or

(c) a joint board established in accordance with a transfer order made under the *Municipal Water and Sewage Transfer Act, 1997*; ("commission de services municipaux")

"post-secondary educational institution" means a university in Ontario, a college of applied arts and technology in Ontario or another post-secondary educational institution in Ontario, if the university, college or institution receives an annual operating grant; ("établissement d'enseignement postsecondaire")

"public hospital" means,

(a) a hospital within the meaning of the *Public Hospitals Act*, or

(b) the University of Ottawa Heart Institute/Institut de cardiologie de l'Université d'Ottawa; ("hôpital public")

"school board" means a board within the meaning of the *Education Act*. ("conseil scolaire") O. Reg. 397/11, s. 1.

Application

2. Sections 4, 5 and 6 apply only to public agencies prescribed by section 3. O. Reg. 397/11, s. 2.

Public agencies

3. The following are prescribed as public agencies for the purposes of the Act:

1. Every municipality.
2. Every municipal service board.
3. Every post-secondary educational institution.
4. Every public hospital.
5. Every school board. O. Reg. 397/11, s. 3.

Energy conservation and demand management plans

4. (1) A public agency shall prepare, publish, make available to the public and implement energy conservation and demand management plans or joint plans in accordance with sections 6 and 7 of the Act and with this Regulation. O. Reg. 397/11, s. 4 (1).

(2) An energy conservation and demand management plan is composed of two parts as follows:

1. A summary of the public agency's annual energy consumption and greenhouse gas emissions for its operations.
2. A description of previous, current and proposed measures for conserving and otherwise reducing the amount of energy consumed by the public agency's operations and for managing the public agency's demand for energy, including a forecast of the expected results of current and proposed measures. O. Reg. 397/11, s. 4 (2).

Summary of annual energy consumption and greenhouse gas emissions

5. (1) Subject to subsection (2), a summary of the public agency's annual energy consumption and greenhouse gas emissions must include a list of the energy consumption and greenhouse gas emissions for the year with respect to each of the public agency's operations that are set out in Table 1 of this Regulation for the type of public agency to which the public agency belongs and that are conducted in buildings or facilities the public agency owns or leases that,

(a) are heated or cooled and in respect of which the public agency is issued the invoices and is responsible for making the payments for the building or facility's energy consumption; or

(b) are related to the treatment or pumping of water or sewage, whether or not the building or facility is heated or cooled, and in respect of which the public agency is issued the invoices and is responsible for making the payments for the building or facility's energy consumption. O. Reg. 397/11, s. 5 (1).

(2) If only part of a building or facility where an operation is conducted is heated or cooled, the public agency's summary referred to in subsection (1) must only include energy consumption and greenhouse gas emissions for the part of the building or facility where the operation is conducted that is heated or cooled. O. Reg. 397/11, s. 5 (2).

(3) The public agency's summary referred to in subsection (1) must be prepared using the form entitled "Energy Consumption and Greenhouse Gas Emissions Template" that is available from the Ministry and must include the following information and calculations for each of the public agency's operations:

1. The address at which the operation is conducted.
2. The type of operation.
3. The total floor area of the indoor space in which the operation is conducted.
4. A description of the days and hours in the year during which the operation is conducted and, if the operation is conducted on a seasonal basis, the period or periods during the year when it is conducted.

5. The types of energy purchased for the year and consumed in connection with the operation.

6. The total amount of each type of energy purchased for the year and consumed in connection with the operation.

7. The total amount of greenhouse gas emissions for the year with respect to each type of energy purchased and consumed in connection with the operation.

8. The greenhouse gas emissions and energy consumption for the year from conducting the operation, calculating,

i. the annual mega watt hours per mega litre of water treated and distributed, if the operation is a water works,

ii. the annual mega watt hours per mega litre of sewage treated and distributed, if the operation is a sewage works, or

iii. per unit of floor space of the building or facility in which the operation is conducted, in any other case. O. Reg. 397/11, s. 5 (3).

(4) If a public agency conducts, in the same building or facility, more than one operation set out in Table 1 of this Regulation for the type of public agency to which the public agency belongs, it shall make a reasonable allocation of the amount of energy purchased and consumed for the year among each of those operations. O. Reg. 397/11, s. 5 (4).

(5) In preparing its annual Energy Consumption and Greenhouse Gas Emission Template, a public agency may exclude its energy consumption and green house gas emissions relating to its temporary use of an emergency or back-up generator in order to continue operations. O. Reg. 397/11, s. 5 (5).

(6) On or before July 1, 2013, every public agency shall submit to the Minister, publish on its website and intranet site, if it has either or both, and make available to the public in printed form at its head office the public agency's Energy Consumption and Greenhouse Gas Emission Template for operations conducted in 2011. O. Reg. 397/11, s. 5 (6).

(7) On or before July 1 of each year after 2013, every public agency shall submit to the Minister, publish on its website and intranet site, if it has either or both, and make available to the public in printed form at its head office the public agency's Energy Consumption and Greenhouse Gas Emission Template for operations conducted in the year following the year to which the last annual Template related. O. Reg. 397/11, s. 5 (7).

(8) The following information, if applicable, must also be submitted, published and made available to the public with every Energy Consumption and Greenhouse Gas Emission Template:

1. If the operation is a school operated by a school board,

i. the number of classrooms in temporary accommodations at the school during the year, and

ii. whether there is an indoor swimming pool in the school.

2. If the public agency is a public hospital, whether a facility operated by the public hospital is a chronic or acute care facility, or both. O. Reg. 397/11, s. 5 (8).

Energy conservation and demand management measures

6. (1) On or before July 1, 2014, every public agency shall publish on its website and intranet site, if it has either or both, and make available to the public in printed form at its head office,

(a) the information referred to in subsection 6 (5) of the Act with respect to each of the public agency's operations set out in Table 1 of this Regulation for the type of public agency to which the public agency belongs;

(b) the information referred to in paragraph 2 of subsection 4 (2) of this Regulation with respect to each of the public agency's operations set out in Table 1 of this Regulation for the type of public agency to which the public agency belongs; and

(c) the following information:

(i) information on the public agency's annual energy consumption during the last year for which complete information is available for a full year,

(ii) the public agency's goals and objectives for conserving and otherwise reducing energy consumption and managing its demand for energy,

(iii) the public agency's proposed measures under its energy conservation and demand management plan,

(iv) cost and saving estimates for its proposed measures,

(v) a description of any renewable energy generation facility operated by the public agency and the amount of energy produced on an annual basis by the facility,

(vi) a description of,

(A) the ground source energy harnessed, if any, by ground source heat pump technology operated by the public agency,

(B) the solar energy harnessed, if any, by thermal air technology or thermal water technology operated by the public agency, and

(C) the proposed plan, if any, to operate heat pump technology, thermal air technology or thermal water technology in the future,

(vii) the estimated length of time the public agency's energy conservation and demand management measures will be in place, and

(viii) confirmation that the energy conservation and demand management plan has been approved by the public agency's senior management. O. Reg. 397/11, s. 6 (1).

(2) In addition to publishing and making available the required information with respect to the operations mentioned in clauses (1) (a) and (b), a public agency may also publish information with respect to any other operation that it conducts. O. Reg. 397/11, s. 6 (2).

(3) On or before July 1, 2019 and on or before every fifth anniversary thereafter, every public agency shall publish on its website and intranet site, if it has either or both, and make available to the public in printed form at its head office all of the information that is required to be published and made available under subsection (1), the Energy Consumption and Greenhouse Gas Emission Template that is required to be submitted and published on or before July 1 of that year and the following information:

1. A description of current and proposed measures for conserving and otherwise reducing energy consumption and managing its demand for energy.

2. A revised forecast of the expected results of the current and proposed measures.

3. A report of the actual results achieved.

4. A description of any proposed changes to be made to assist the public agency in reaching any targets it has established or forecasts it has made. O. Reg. 397/11, s. 6 (3).

(4) If a public agency initiated energy conservation measures or energy demand management measures before July 1, 2014, the public agency may also include in its first plan information on the results of those measures. O. Reg. 397/11, s. 6 (4).

7. Omitted (provides for coming into force of provisions of this Regulation). O. Reg. 397/11, s. 7.

TABLE 1

Column 1	Column 2	Column 3
Item	Type of public agency	Operation
1.	Municipality	1. Administrative offices and related facilities, including municipal council chambers.
		2. Public libraries.
		3. Cultural facilities, indoor recreational facilities and community centres, including art galleries, performing arts facilities, auditoriums, indoor sports arenas, indoor ice rinks, indoor swimming pools, gyms and

		indoor courts for playing tennis, basketball or other sports.
		4. Ambulance stations and associated offices and facilities.
		5. Fire stations and associated offices and facilities.
		6. Police stations and associated offices and facilities.
		7. Storage facilities where equipment or vehicles are maintained, repaired or stored.
		8. Buildings or facilities related to the treatment or pumping of water or sewage.
		9. Parking garages.
2.	Municipal service board	1. Buildings or facilities related to the treatment or pumping of water or sewage.
3.	Post-secondary educational institution	1. Administrative offices and related facilities.
		2. Classrooms and related facilities.
		3. Laboratories.
		4. Student residences that have more than three storeys or a building area of more than 600 square metres.
		5. Student recreational facilities and athletic facilities.
		6. Libraries.
		7. Parking garages.
4.	School board	1. Schools.
		2. Administrative offices and related facilities.
		3. Parking garages.
5.	Public hospital	1. Facilities used for hospital purposes.
		2. Administrative offices and related facilities.

O. Reg. 397/11, Table 1.

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Explanatory Note

CHAPTER 27

An Act to amend the Environmental Protection Act with respect to greenhouse gas emissions trading and other economic and financial instruments and market-based approaches

Assented to December 15, 2009

Note: This Act amends the *Environmental Protection Act*. For the legislative history of the Act, see the Table of Consolidated Public Statutes – Detailed Legislative History at www.e-Laws.gov.on.ca.

Preamble

The Intergovernmental Panel on Climate Change (IPCC) that was set up by the World Meteorological Organization and by the United Nations Environment Programme has concluded that warming of the climate system is unequivocal and that most of the observed increase in global average temperatures is due to human activities.

Strong and sustained action is required to minimize the risks posed by climate change.

Taking action now to reduce greenhouse gas emissions is less costly than the potentially severe economic impacts that are risked by inaction. Cap and trade systems are flexible, market-based approaches that can help to reduce greenhouse gas emissions and encourage technological innovation, economic growth and job creation.

In June 2008, the governments of Ontario and Quebec agreed to collaborate on a greenhouse gas cap and trade initiative. In July 2008, Ontario joined the Western Climate Initiative, which also includes Arizona, British Columbia, California, Manitoba, Montana, New Mexico, Oregon, Quebec, Utah and Washington, in working on a regional cap and trade system. These linkages with other jurisdictions and a potential broader North American cap and trade system can provide emission reductions at lower cost, improve the pace of innovation and allow for larger trading volumes and improved liquidity.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 1 (1) of the *Environmental Protection Act* is amended by adding the following definition:

"greenhouse gas" means,

(a) carbon dioxide,

(b) methane,

(c) nitrous oxide,

(d) hydrofluorocarbons,

(e) perfluorocarbons,

(f) sulphur hexafluoride, or

(g) any other contaminant prescribed as a greenhouse gas by the regulations; ("gaz à effet de serre")

2. (1) Section 176.1 of the Act is repealed and the following substituted:

Regulations, market-based approaches, etc.

176.1 (1) The Lieutenant Governor in Council may make regulations establishing programs and other measures for the use of economic and financial instruments and market-based approaches, including without being limited to emissions trading, for the purposes of maintaining or improving existing environmental standards, protecting the environment and achieving environmental quality goals in a cost effective manner.

Same, included powers

(2) Without limiting the generality of subsection (1), the power to make regulations under subsection (1) includes the power to make regulations,

(a) prescribing the persons, entities and facilities to which programs and other measures established under subsection (1) apply;

(b) governing the economic and financial instruments to be used in programs and other measures established under subsection (1), including,

(i) providing for the instruments to be created by or in accordance with the regulations and governing the creation of those instruments,

(ii) providing for instruments created by the regulations under subclause (i) to be distributed free of charge, and governing the distribution of those instruments,

(iii) governing the use, trading and retirement of instruments created by or in accordance with the regulations under subclause (i),

(iv) governing the use and trading, for the purpose of programs and other measures established under subsection (1), of instruments created in other jurisdictions, and

(v) requiring notice to be given to other jurisdictions of the use or trading, for the purpose of programs and other measures established under subsection (1), of instruments created in those jurisdictions;

(c) prescribing requirements that must be met by persons, entities and facilities to which programs and other measures established under subsection (1) apply, including

requirements related to the emission, monitoring and reporting of contaminants;

(d) attributing emissions to a person, entity or facility for the purpose of programs and other measures established under subsection (1);

(e) providing for or designating a person or body to administer programs and other measures established under subsection (1).

Same, powers under ss. 175.1 and 176 (1)

(3) Without limiting the generality of subsection (1), with respect to programs and other measures established by regulations made under that subsection, the power to make regulations under subsection (1) includes the power to make any regulation that may be made under section 175.1 or subsection 176 (1).

(2) Section 176.1 of the Act, as re-enacted by subsection (1), is amended by adding the following subsections:

Same, greenhouse gases

(4) A regulation under this section that relates to greenhouse gases may,

(a) provide for instruments created by the regulations under subclause (2) (b) (i) to be distributed free of charge, or by auction, sale or other means that are not free of charge, and governing the distribution of those instruments;

(b) authorize a person or body to prescribe, govern or otherwise determine any matter that may be prescribed, governed or otherwise determined by the Lieutenant Governor in Council under this section.

Same

(5) Without limiting the generality of clause (4) (a), a regulation under that clause may,

(a) prescribe objectives and other matters that must be considered in setting the percentages of instruments to be distributed by any of the means referred to in clause (4) (a);

(b) prescribe objectives and other matters that must be considered in setting reserve bids for instruments distributed by auction or sale prices for instruments distributed by sale.

Greenhouse Gas Reduction Account

(6) Any amount paid to the Minister of Finance from the distribution of instruments under the regulations made under clause (4) (a) shall be deposited in a separate account in the Consolidated Revenue Fund to be known in English as the Greenhouse Gas Reduction Account and in French as Compte de réduction des gaz à effet de serre.

Same

(7) For the purpose of the *Financial Administration Act*, money deposited in the Greenhouse Gas Reduction Account shall be deemed to be money paid to Ontario for the special purpose described in subsection (8).

Payments out of account

(8) Money may be paid out of the Greenhouse Gas Reduction Account for the purpose of reimbursing the Crown in right of Ontario for costs incurred by the Crown in administering the regulations under this section that relate to greenhouse gases and in carrying out or supporting greenhouse gas reduction initiatives, particularly initiatives that relate to the sectors of the

Ontario economy to which the regulations apply.

Same

(9) Without limiting the generality of subsection (8), money may be paid out of the account under that subsection with respect to the following costs:

1. The costs of research into or the development or deployment of lower greenhouse gas emitting technologies in a sector of the Ontario economy to which the regulations under clause (4) (a) apply.
2. The costs of programs to reduce greenhouse gas emissions in a sector of the Ontario economy to which the regulations under clause (4) (a) apply.
3. The costs of infrastructure or equipment to reduce greenhouse gas emissions in a sector of the Ontario economy to which the regulations under clause (4) (a) apply.
4. If the regulations made under clause (4) (a) apply to the electricity sector of the Ontario economy, costs of any greenhouse gas reduction initiative that would otherwise be borne by electricity consumers.

Commencement

3. (1) Subject to subsection (2), this Act comes into force on the day it receives Royal Assent.

Same

(2) Section 1 and subsection 2 (2) come into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

4. The short title of this Act is the *Environmental Protection Amendment Act (Greenhouse Gas Emissions Trading), 2009*.

Français Explanatory Note

Back to top

Environmental Protection Act, RSO 1990, c E.19

Current version: in force since Dec 31, 2011

Environmental Protection Act

R.S.O. 1990, CHAPTER E.19

Consolidation Period: From December 31, 2011 to the e-Laws currency date.

Last amendment: 2010, c. 16, Sched. 7, s. 2.

Interpretation

1. (1) In this Act,

"administrative penalty" means a penalty imposed under section 182.3; (pénalité administrative")

"adverse effect" means one or more of,

(a) impairment of the quality of the natural environment for any use that can be made of it,

(b) injury or damage to property or to plant or animal life,

(c) harm or material discomfort to any person,

(d) an adverse effect on the health of any person,

(e) impairment of the safety of any person,

(f) rendering any property or plant or animal life unfit for human use,

(g) loss of enjoyment of normal use of property, and

(h) interference with the normal conduct of business; ("conséquence préjudiciable")

"air" means open air not enclosed in a building, structure, machine, chimney, stack or flue; ("air")

"analyst" means an analyst appointed under this Act; ("analyste")

"certificate of property use" means a certificate of property use issued under section 168.6; ("certificat d'usage d'un bien")

"certification date" means, in respect of a record of site condition, a date determined in accordance with the regulations that is not later than the date the record of site condition is filed in the Environmental Site Registry; ("date d'attestation")

"contaminant" means any solid, liquid, gas, odour, heat, sound, vibration, radiation or combination of any of them resulting directly or indirectly from human activities that causes or may cause an adverse effect; ("contaminant")

"discharge", when used as a verb, includes add, deposit, leak or emit and, when used as a noun, includes addition, deposit, emission or leak; ("rejet", "rejeter")

"document" includes a sound recording, videotape, film, photograph, chart, graph, map, plan, survey, book of account and information recorded or stored by means of any device; ("document")

"environmental compliance approval" means an approval issued under Part II.1; ("autorisation environnementale")

"environmental penalty" means a penalty imposed under section 182.1; ("pénalité environnementale")

"fiduciary" means an executor, administrator, administrator with the will annexed, trustee, guardian of property or attorney for property, but does not include a trustee in bankruptcy or trustee in bankruptcy representative; ("représentant fiduciaire")

"fiduciary representative" means, with respect to a fiduciary, an officer, director, employee or agent of the fiduciary, or a lawyer, consultant or other advisor of the fiduciary who is acting on behalf of the fiduciary; ("représentant d'un représentant fiduciaire")

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by adding the following definition:

"greenhouse gas" means,

(a) carbon dioxide,

(b) methane,

(c) nitrous oxide,

(d) hydrofluorocarbons,

(e) perfluorocarbons,

(f) sulphur hexafluoride, or

(g) any other contaminant prescribed as a greenhouse gas by the regulations; ("gaz à effet de serre")

See: 2009, c. 27, ss. 1, 3 (2).

"inspection" includes an audit, examination, survey, test and inquiry; ("inspection")

"justice" means a provincial judge or a justice of the peace; ("juge")

"land" means surface land not enclosed in a building, land covered by water and all subsoil, or any combination or part thereof; ("terrain")

"Minister" means the Minister of the Environment; ("ministre")

"Ministry" means the Ministry of the Environment; ("ministère")

"municipal representative" means, with respect to a municipality, an officer, employee or agent of the municipality, or a lawyer, consultant or other advisor of the municipality who is acting on behalf of the municipality; ("représentant municipal")

"municipality" includes a local board, as defined in the *Municipal Affairs Act*, and a board, commission or other local authority exercising any power with respect to municipal affairs or purposes, including school purposes, in an unorganized township or unsurveyed territory; ("municipalité")

"natural environment" means the air, land and water, or any combination or part thereof, of the Province of Ontario; ("environnement naturel")

"person" includes a municipality as defined in this subsection; ("personne")

"person responsible" means the owner, or the person in occupation or having the charge, management or control of a source of contaminant; ("personne responsable")

"place" includes a building, structure, machine, vehicle or vessel; ("lieu")

"provincial officer" means a person who is designated by the Minister as a provincial officer for the purposes of this Act and the regulations; ("agent provincial")

"receiver" means a person who has been appointed to take or who has taken possession or control of property pursuant to a mortgage, hypothec, pledge, charge, lien, security interest, encumbrance or privilege or pursuant to an order of a court, and includes a receiver-manager and an interim receiver; ("séquestre")

"receiver representative" means, with respect to a receiver, an officer, director, employee or agent of the receiver, or a lawyer, consultant or other advisor of the receiver who is acting on behalf of the receiver; ("représentant d'un séquestre")

"regulated person" means,

(a) a person who belongs to a class of persons prescribed by the regulations and who holds or is required to hold,

(i) an environmental compliance approval, certificate of property use, renewable energy approval, licence or permit under this Act, or

(ii) an approval, licence or permit under the *Ontario Water Resources Act*,

(b) a person who has registered or is required to register an activity under subsection 20.21 (1), or

(c) a corporation that belongs to a class of corporations prescribed by the regulations; ("personne réglementée")

"regulations" means the regulations made under this Act; ("règlements")

"renewable energy generation facility" has the same meaning as in the *Electricity Act, 1998*; ("installation de production d'énergie renouvelable")

"renewable energy project" has the same meaning as in the *Green Energy Act, 2009*; ("projet d'énergie renouvelable")

"secured creditor" means a person who holds a mortgage, hypothec, pledge, charge, lien, security interest, encumbrance or privilege on or against property, but does not include a person who has taken possession or control of the property; ("créancier garanti")

"secured creditor representative" means, with respect to a secured creditor, an officer, director, employee or agent of the secured creditor, or a lawyer, consultant or other advisor of the secured creditor who is acting on behalf of the secured creditor; ("représentant d'un créancier garanti")

"source of contaminant" means anything that discharges into the natural environment any contaminant; ("source de contamination")

"Tribunal" means the Environmental Review Tribunal; ("Tribunal")

"trustee in bankruptcy representative" means, with respect to a trustee in bankruptcy, an officer, director, employee or agent of the trustee in bankruptcy, or a lawyer, consultant or other advisor of the trustee in bankruptcy who is acting on behalf of the trustee in bankruptcy; ("représentant d'un syndic de faillite")

"water" means surface water and ground water, or either of them. ("eau") R.S.O. 1990, c. E.19, s. 1 (1); 1992, c. 1, s. 22; 1998, c. 35, s. 1; 2000, c. 26, Sched. F, s. 12 (1-3); 2001, c. 9, Sched. G, s. 5 (1); 2001, c. 17, s. 2 (1); 2002, c. 17, Sched. F, Table; 2005, c. 12, s. 1 (1-3); 2009, c. 12, Sched. G, s. 1; 2009, c. 19, s. 67 (1); 2010, c. 16, Sched. 7, s. 2 (1, 2).

Idem, Director

(2) In this Act,

"the Director" means a Director appointed under section 5. R.S.O. 1990, c. E.19, s. 1 (2).

Idem, penalties

(3) A municipality that is convicted of an offence under this Act is liable to the penalty provided for a corporation convicted of the offence. R.S.O. 1990, c. E.19, s. 1 (3).

Health or safety

(4) For the purposes of this Act, a danger to existing water supplies that are used for human consumption shall be deemed to be a danger to the health or safety of persons. 2001, c. 17, s. 2 (2).

Secondary discharge within building

2. A contaminant that is discharged into the air within a building or structure as a result of the discharge of the same or another contaminant in another building or structure shall be deemed to be discharged into the natural environment by the owner or the person who has the charge, management or control of the contaminant discharged in the other building or structure. R.S.O. 1990, c. E.19, s. 2.

Interpretation, environmental compliance approval

2.1 For the purposes of this Act and the regulations made under it and any other Act and the regulations made under any other Act,

(a) any reference to an environmental compliance approval includes,

(i) a certificate of approval or provisional certificate of approval issued under section 9 or 39 before the day this section comes into force, and

(ii) an approval granted under section 53 of the *Ontario Water Resources Act* before the day this section comes into force; and

(b) any certificate of approval, provisional certificate of approval or approval mentioned in subclause (a) (i) or (ii) may be amended, reviewed, suspended and revoked as if it were an environmental compliance approval. 2010, c. 16, Sched. 7, s. 2 (3).

PART I
ADMINISTRATION

Purpose of Act

3. (1) The purpose of this Act is to provide for the protection and conservation of the natural environment. R.S.O. 1990, c. E.19, s. 3.

Extra-provincial environment

(2) No action taken under this Act is invalid by reason only that the action was taken for the purpose of the protection, conservation or management of the environment outside Ontario's borders.

Idem

(3) Subsection (2) applies even if the action was taken before the coming into force of that subsection. 1992, c. 1, s. 23.

Powers and duties of Minister

4. (1) The Minister, for the purposes of the administration and enforcement of this Act and the regulations, may,

(a) investigate problems of pollution, waste management, waste disposal, litter management and litter disposal;

(b) conduct research related to contaminants, pollution, waste management, waste disposal, litter management and litter disposal;

(c) conduct studies of the quality of the natural environment, meteorological studies, and monitoring programs;

(d) conduct studies of environmental planning designed to lead to the wise use of the natural environment;

(e) convene conferences and conduct seminars and educational and training programs relating to contaminants, pollution, waste and litter;

(f) gather, publish and disseminate information relating to contaminants, pollution, waste and litter;

Note: On a day to be named by proclamation of the Lieutenant Governor, section 176.1 is amended by adding the following subsections:

Same, greenhouse gases

(4) A regulation under this section that relates to greenhouse gases may,

(a) provide for instruments created by the regulations under subclause (2) (b) (i) to be distributed free of charge, or by auction, sale or other means that are not free of charge, and governing the distribution of those instruments;

(b) authorize a person or body to prescribe, govern or otherwise determine any matter that may be prescribed, governed or otherwise determined by the Lieutenant Governor in Council under this section. 2009, c. 27, s. 2 (2).

Same

(5) Without limiting the generality of clause (4) (a), a regulation under that clause may,

(a) prescribe objectives and other matters that must be considered in setting the percentages of instruments to be distributed by any of the means referred to in clause (4) (a);

(b) prescribe objectives and other matters that must be considered in setting reserve bids for instruments distributed by auction or sale prices for instruments distributed by sale. 2009, c. 27, s. 2 (2).

Greenhouse Gas Reduction Account

(6) Any amount paid to the Minister of Finance from the distribution of instruments under the regulations made under clause (4) (a) shall be deposited in a separate account in the Consolidated Revenue Fund to be known in English as the Greenhouse Gas Reduction Account and in French as Compte de réduction des gaz à effet de serre. 2009, c. 27, s. 2 (2).

Same

(7) For the purpose of the *Financial Administration Act*, money deposited in the Greenhouse Gas Reduction Account shall be deemed to be money paid to Ontario for the special purpose described in subsection (8). 2009, c. 27, s. 2 (2).

Payments out of account

(8) Money may be paid out of the Greenhouse Gas Reduction Account for the purpose of reimbursing the Crown in right of Ontario for costs incurred by the Crown in administering the regulations under this section that relate to greenhouse gases and in carrying out or supporting greenhouse gas reduction initiatives, particularly initiatives that relate to the sectors of the Ontario economy to which the regulations apply. 2009, c. 27, s. 2 (2).

Same

(9) Without limiting the generality of subsection (8), money may be paid out of the account under that subsection with respect to the following costs:

1. The costs of research into or the development or deployment of lower greenhouse gas emitting technologies in a sector of the Ontario economy to which the regulations under clause (4) (a) apply.

2. The costs of programs to reduce greenhouse gas emissions in a sector of the Ontario economy to which the regulations under clause (4) (a) apply.

3. The costs of infrastructure or equipment to reduce greenhouse gas emissions in a sector of the Ontario economy to which the regulations under clause (4) (a) apply.

4. If the regulations made under clause (4) (a) apply to the electricity sector of the Ontario economy, costs of any greenhouse gas reduction initiative that would otherwise be borne by electricity consumers. 2009, c. 27, s. 2 (2).

See: 2009, c. 27, ss. 2 (2), 3 (2).