

ONTARIO ENERGY BOARD

IN THE MATTER OF THE *Ontario Energy Board Act*, S.O. 1998, C.15,
Schedule B, and in particular Section 21(2) thereof;

AND IN THE MATTER OF the *Assessment Act*, R.S.O. 1990, c. A31, and in
particular Section 25(3) thereof;

AND IN THE MATTER OF an Application by Lagasco Inc. for an Order
determining whether or not the natural gas pipelines owned and operated by
Lagasco Inc. in Haldimand County are gas transmission pipelines

**SUBMISSIONS OF THE INTERVENORS, THE
MUNICIPALITY OF CHATHAM-KENT, THE COUNTY
OF ELGIN, HALDIMAND COUNTY, THE COUNTY OF
LAMBTON, THE CORPORATION OF THE MUNICIPALITY OF BAYHAM,
THE CORPORATION OF THE TOWNSHIP OF MALAHIDE, THE CORPORATION
OF THE MUNICIPALITY OF CENTRAL ELGIN, THE CORPORATION OF THE
TOWNSHIP OF SOUTHWOLD, THE CORPORATION OF THE MUNICIPALITY
OF DUTTON DUNWICH, and THE CORPORATION OF THE
MUNICIPALITY OF WEST ELGIN (the “Municipalities”)**

OVERVIEW

1. In terms of the issues raised, this Application by Lagasco Inc. (“**Lagasco**”) is almost identical to an Application brought to the Board by Tribute Resources Inc. (“**Tribute**”) as recently as 2015.
2. The natural gas “gathering pipelines” owned by Lagasco, as described in the evidence herein, are materially the same in nature and function as to those owned by Tribute as described in its 2015 Application.
3. The key legal issues concerning the proper interpretation and application of s. 25(1) of the *Assessment Act*, R.S.O. 1990, c. A31 are also the same in both cases.

4. On those legal issues, the Board’s Decision and Order in the Tribute matter¹ holds that “gathering pipelines” of the kind in issue are “pipe lines” as defined in s. 25(1). That decision was upheld on appeal.² Indeed, the Divisional Court’s reasons on that appeal specifically found that the Board’s decision not to apply “the technical meaning and understanding of the words [of s. 25(1)] as they are used in the oil and gas industry”, but rather “to apply the common and ordinary meaning” of those words, was “consistent with the rules of statutory interpretation” applied by our courts.

5. In other words, the Board’s decision in *Tribute (OEB)* was found to be correct in law.

6. The Municipalities respectfully submit that there is no reason for the Board to distinguish or to depart from those decisions in the present case. Rather, in all the circumstances, the Board is bound by *Tribute (Div Ct)*, and it must apply that decision here.

7. As such, Lagasco’s Application must be dismissed.

¹ Decision and Order, EB-2015-0206 *Re Tribute Resources Inc.* dated May 5, 2016 (“*Tribute (OEB)*”)

² *Tribute v. OEB*, 2018 ONSC 265 (Div. Ct.) (“*Tribute (Div Ct)*”), dismissing the appeal from the Board’s decision in *Tribute (OEB)* (<https://www.canlii.org/en/on/on/scdc/doc/2018/2018onsc265/2018onsc265.html>)

THE LAGASCO APPLICATION AND THE BOARD'S PROCESS

8. Lagasco's Notice of Application dated June 7, 2019 (the "**Notice of Application**") seeks a declaration by the Board that certain of its natural gas pipelines located in Haldimand County (which it refers to as the "**Haldimand Pipelines**"), together with "all other similarly used or situated pipelines owned by Lagasco" (the "**Similarly Situated Pipelines**") are not and were not at any time after January 1, 2015 "pipe lines" within the meaning of s. 25 of the *Assessment Act*.³

9. The Haldimand Pipelines and the Similarly Situated Pipelines are referred to together in these Written Submissions as the "**Pipelines in Issue**".

10. Lagasco's Application is supported by an Affidavit of its President and CEO, Jane E. Lowrie (the "**Lowrie Affidavit**"), which describes the subject pipelines and how they were purchased by Lagasco in late 2018 from a previous owner, Dundee Energy Limited Partnership and its general partner Dundee Oil and Gas (collectively, "**Dundee**"). The Lowrie Affidavit also describes how these pipelines were assessed prior to that purchase for municipal property tax purposes by the Respondent, the Municipal Property Assessment Corporation of Ontario ("**MPAC**"). It states that appeals under the *Assessment Act* have been made to the Assessment Review Board ("**ARB**") against the MPAC assessments of the subject pipelines for 2015 and subsequent years. Further, the Lowrie Affidavit asserts that the subject pipelines are being taxed "excessively". Finally, the Lowrie Affidavit cites certain oil and gas industry documents that are said to distinguish for certain purposes between "transmission" pipelines and "gathering" or "collection" pipelines.

11. Lagasco's Application is also supported by an Affidavit of Rob Koller of Deloitte LLP which purports to provide an expert report about the process chain by which natural gas in Ontario is drilled, moved, processed and delivered to customers; about the different types of pipelines involved; and about the economics and valuation of those pipelines (the "**Koller Report**").⁴

³ Notice of Application, June 7, 2019

⁴ Koller Affidavit, Exhibit "A", report dated May 21, 2020

12. MPAC, the Municipalities, and the Ontario Petroleum Institute (“**OPI**”) applied for and were granted intervenor status in the Lagasco Application.⁵

13. MPAC filed an Affidavit of its Manager of Linear Properties, Ryan Ford (the “**Ford Affidavit**”) which describes the process and methodologies used by MPAC for the assessment of natural gas pipelines.

14. The Municipalities and OPI elected not to file further evidence.

15. All parties then exchanged detailed written interrogatories and responses, in accordance with the Board’s *Rules of Procedure*.

16. Lagasco requested an oral hearing. However, after receiving written submissions on this request from interested parties (the Municipalities taking no position), the Board Panel determined that an oral hearing would be of no benefit, as the issue before it is primarily one of statutory interpretation, and no material gaps in the evidentiary record had been identified.⁶

⁵ Procedural Order No. 1, July 17, 2020

⁶ Procedural Order No. 3, September 23, 2020

THE RELEVANT FACTS

(a) The Pipelines in Issue

17. Lagasco's Notice of Application focusses on what it calls the Haldimand Pipelines, which it states are identified on the map attached as Schedule "A" thereto.⁷

18. In addition, however, Lagasco's Notice of Application asks that the Board's ruling also apply to "all other similarly used or situated pipelines owned by Lagasco", some of which are said by Lagasco to be located across the areas of the Municipalities other than Haldimand County, as well as other neighbouring municipal corporations.

19. The Pipelines in Issue are described generally or functionally in Lagasco's evidence as comprising (a) a network of smaller, low pressure, steel gathering pipelines connected to natural gas production wells located across Haldimand County, and (b) a larger, pressurized main gathering pipeline to which the smaller lines connect, which "in turn moves the natural gas produced ... to a treatment facility" where it is transformed to saleable quality and delivered to the local gas distribution company through a meter point.⁸ They are also described in the Lowrie Affidavit and Lagasco's IR responses as including both "onshore" and "offshore" pipelines.⁹

20. However, Lagasco's evidence is very confusing both as to the precise location of these lines, and the MPAC assessment roll numbers with which they are associated. For example:

- a. The map attached as Schedule "A" to the Notice of Application is identified in para. 2 as relating only to the Haldimand Pipelines, yet in para. 3 and Exhibit "A" to the Lowrie Affidavit, the same map is said to identify all the lines that Lagasco purchased from Dundee.¹⁰
- b. Exhibit "B" to the Lowrie Affidavit is described in para. 10 thereof as a "complete list" of the MPAC assessment roll numbers for all the Pipelines in Issue in Ontario. It lists

⁷ Notice of Application, para. 1 and Schedule "A"

⁸ Lowrie Affidavit, paras. 5 and 6 and Exhibit "A"

⁹ Lowrie Affidavit, para. 8; Lagasco Response to IR 2 from the Municipalities; Lagasco Response to IR 1A from Board Staff; and Lagasco Response to Supplementary IR 1 from the Municipalities

¹⁰ Lowrie Affidavit, para. 3 and Exhibit "A"

26 such roll numbers, 3 of which are in Haldimand County. However, para. 8 of the Lowrie Affidavit states that a total of 55 MPAC roll numbers “attributable to Lagasco” are under appeal to the ARB, apparently including non-pipeline “facilities”.

- c. Moreover, the Ford Affidavit notes that 2 of the roll numbers included in Lagasco’s list of 26 are not pipelines, and it provides a more detailed spreadsheet describing the remaining roll numbers that do relate to pipelines.¹¹

21. When the Municipalities filed their IRs on Lagasco’s evidence, IR-2 and IR-3 sought clarification on this issue, as did Board Staff IR question 1A. Lagasco’s responses to these questions failed to resolve the issues clearly. As a result, the Municipalities sent a further question seeking clarification. In its response, Lagasco acknowledged that MPAC “has the best records of the pipelines and their locations”. It adopted the spreadsheet attached as Exhibit “A” to the Ford Affidavit as accurate, and it provided further information in the form of additional spreadsheets generated by MPAC about the 24 municipal roll numbers in issue.¹²

(b) Designation by the Owner of the Pipelines in Issue

22. As in the *Tribute* matter, MPAC’s evidence is that it relies on pipeline companies to report and designate their own pipelines when they are installed or abandoned, and that it assesses (or ceases to assess) the pipelines based on such owners’ reports. The information reported and used in the assessments includes the location of the pipelines (by municipality), type, pipe diameter and length, and year installed.¹³

23. MPAC’s evidence is that the Pipelines in Issue have been assessed in accordance with s. 25 since they were designated by their then owners. At that time, pursuant to MPAC’s standard procedure, they were added to the assessment roll based on such designation. The dates that Lagasco’s pipelines were installed are set out in the MPAC spreadsheet at Exhibit “A” to the Ford Affidavit, which as noted has been adopted by Lagasco. Those installation dates, some of which go back to the late 1950s, likely reflect the year that MPAC received the information about the

¹¹ Ford Affidavit, para. 2, footnote 1, and Exhibit “A”

¹² Lagasco Response to Supplementary IR 1 from the Municipalities; Ford Affidavit, para. 7 and Exhibit “A”

¹³ Ford Affidavit, paras. 7-9

respective pipelines from the pipeline company. On receiving the information, the pipelines would have been assessed on the next assessment roll (i.e., for the subsequent calendar year).¹⁴

24. In *Tribute (OEB)*, the Board found that this same evidence was sufficient for it to determine that the Tribute pipelines were designated by the owner as transmission pipelines as required under ss. 25(2) of the *Assessment Act*. The Board also noted that Notices of Assessment and tax bills were sent out periodically thereafter, apparently without objection by the former owners of the Tribute pipeline, and the same appears to be the case for the Pipelines in Issue.¹⁵

(c) The Different Kinds of Pipelines

26. As in the Tribute matter, Lagasco asks the Board to note the distinctions drawn, for various purposes in the oil and gas industry, between different types of natural gas pipelines.

27. In particular, Lagasco seeks to distinguish “gathering” pipelines from “transmission” pipelines. To support such distinction, Lagasco points to

- a. a legislated *CSA Standard Z662-15* relating to the specification of piping used in, among other things, the construction of natural gas pipelines; and
- b. a definition of “pipeline” found in the *Oil, Gas and Salt Resources Act*, R.S.O. 1990, c. P.12, which regulates gas producers such as Lagasco.

28. While there are some similarities and some differences to s. 25 of the *Assessment Act* in the statutory language used in these provisions, neither of them relate in any way to the subject of municipal property tax assessment.

(d) The Evidence of Koller

29. In this Application, unlike the *Tribute* matter, Lagasco has filed before the Board expert evidence about the valuation of pipeline properties, and the economics of their operations, to support Lagasco’s arguments that the level of taxation of the Pipelines in Issue in 2015-2018 is

¹⁴ Ford Affidavit, para. 9 and Exhibit “A”

¹⁵ *Tribute (OEB)*, at pp. 6-7; Lowrie Affidavit, para. 9; Lagasco Response to IR 3 from the Municipalities

excessive. The Municipalities take issue with the relevance of this evidence to the Board's function under s. 25 of the *Assessment Act* in their arguments below.

30. In terms of matters of fact that are not contested, the Koller Report acknowledges that:

- a. “gathering pipelines and related processing facilities only serve to monetize the values of the primary asset, being the natural gas reserves” until the natural gas reserves in the producing field are depleted;¹⁶
- b. “[t]he value of the gathering pipelines is inherently captured in the value of the reserves when reserve reports are prepared”;¹⁷ and
- c. “[o]nce the reserves are depleted, the gathering lines do not have any independent value of their own”.

(e) The Appeals to the ARB

31. On the evidence of Lagasco, appeals to the ARB from the current assessments have been filed in all 55 roll numbers, not just the 24 pipeline roll numbers.

32. In addition, Lagasco acknowledges that those appeals were originally stayed by the ARB pending the resolution of the *Tribute* matter. In those circumstances, it appears that Lagasco was on notice of the Tribute proceedings while they were ongoing, and had the opportunity to take part in them, but elected not to do so.¹⁸

¹⁶ Koller Report, paras. 21) and 22)

¹⁷ Koller Report, paras. 23) and 28)

¹⁸ Lowrie Affidavit, para. 8

ISSUES AND ARGUMENT

(a) The Board's Role in the Context of Pipeline Assessment

33. It is important at the outset to acknowledge that the Board's role and jurisdiction under s. 25 of the *Assessment Act* is a limited one, which must be exercised with the understanding that many other aspects of the assessment of pipeline properties under that statute are remitted to the expertise and jurisdiction of other statutory bodies. Those bodies include MPAC, the ARB, the Minister of Municipal Affairs, and those advising Lieutenant Governor in Council regarding the making of regulations under the *Assessment Act*.

34. In Ontario, the *Assessment Act* and the *Municipal Act, 2001* S.O. 2001 c. 25 constitute a complete code for assessment and taxation of property.¹⁹

35. Within that scheme, s. 25 is a legislative provision to permit the practical assessment of "pipe lines" that run under multiple properties, as is common with respect to linear properties throughout North America.

36. The Board's jurisdiction is precisely defined in ss. 25(3) as follows:

Disputes

(3) All *disputes as to whether or not a gas pipe line is a transmission pipe line* shall, on the application of any interested party, be decided by the Ontario Energy Board and its decision is final. R.S.O. 1990, c. A.31, s. 25 (3) (emphasis added).

37. Therefore, the Board's jurisdiction is limited to resolving the disputes captured by ss. 25(3), which are (i) disputes related to a gas pipeline, not to an oil pipeline; and (ii) disputes that are, like this one, about whether a given gas pipeline does or does not fall within the words "a pipe line for the transportation or transmission of gas that is designated by the owner as a transmission pipe line" in the definition of "pipe line" in ss. 25(1).

¹⁹ See for example *1037618 Ontario Inc. v. Thunder Bay (City)*, (1999) 45 O.R. (3d) 161 (C.A.) at paras. 6-7 (page 3), citing *Zaidan Group Ltd. v. London (City)* (1990), 71 O.R. (2d) 65 (Ont. C.A.), at pp. 67 & 69, affirmed [1991] 3 S.C.R. 593 (S.C.C.) (<https://www.canlii.org/en/on/onca/doc/1999/1999canlii3767/1999canlii3767.html>)

38. As such, the Municipalities submit that the Board Panel was correct in determining in Procedural Order No. 3 that its role in this case “is primarily one of statutory interpretation”.²⁰

39. In addition, it is submitted that the Board should recognize that it does not have a role in deciding how the value of any pipeline should be assessed for municipal property tax purposes, nor in deciding what rate of tax should be applied to that assessed value. Those and other matters that affect the actual tax amount payable by gas producers like Lagasco and Tribute are all remitted to bodies other than the Board. Any attempt to put those issues before the Board would go against the complete code for assessment and taxation of property in Ontario.

(b) The Economic Impacts of s. 25 are not Relevant to the Board’s Function

40. The Municipalities submit that this context is important because it makes clear that Lagasco’s efforts to engage this Board Panel on the alleged economic impacts of the municipal property tax system on gas producers in Ontario are all fundamentally misplaced.

41. The Legislature has remitted control of all matters that determine those economic impacts to bodies other than the Board. In that legislative scheme, it cannot possibly have been intended that the Board would or should attempt, through its interpretation of the one provision remitted to its jurisdiction, to change the economic consequences of a system that has been put in place, and is maintained in operation, almost entirely by other bodies. The evidence and submissions to this Board in support of Lagasco’s attempt to characterize the tax as “excessive” or “uneconomic”, including the Koller Report, should therefore be rejected as irrelevant to the limited role of the Board.

42. In particular, the Municipalities submit that the Koller Report is not relevant because it is focussed on the economics of the Pipelines in Issue towards the end of their “useful life”, and addresses various factual issues that are not - and should not be – before the Board. The economics of those assets at the time they were installed and designated by the prior owners, from 1957 onwards, may have been and probably was quite different. The Koller Report also does not establish Lagasco’s claim that the alleged disparity between the assessed value of the Pipelines in Issue, and what Lagasco calls their “true value” as of 2018, is caused by the system of assessment

²⁰ Procedural Order No. 3, September 23, 2020

under s. 25 of the *Assessment Act*, as opposed to other factors such as the depletion of the gas reserves, the market price of gas, or increases in other costs of Lagasco’s gas gathering business.

43. Further, it appears from the evidence of MPAC²¹ that the designations which resulted in the application of the method of assessment under s. 25 to the Pipelines in Issue may have been the subject of negotiations and agreements between the prior owners of these pipelines, and the owners of the real property on which they are situated, and that any change to the *status quo* may change the negotiated allocation of the municipal tax liability between them. Details of those negotiations, and the parties to them, are not before the Board on this Application.

(c) Principles of Statutory Interpretation

44. The Municipalities accept the general approach to statutory interpretation set out in paragraph 21 of Lagasco’s Written Submissions, which comes from Dreiger’s *Construction of Statutes*²²:

Today there is only one principle or approach; namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

45. That formulation of the general rule has been mandated by the Supreme Court of Canada in recent cases. It was specifically adopted and applied by the Divisional Court in *Tribute (Div Ct)*, including the Supreme Court’s confirmation that this approach is “applicable to statutes dealing with technical or scientific matters”.²³

46. Contrary to Lagasco’s Written Submissions, however, this is not a case where s. 25(1) of the *Assessment Act* is ambiguous, or “remains ambiguous” after applying this general approach to statutory interpretation, such that any special rules of construction related to taxing statutes need

²¹ MPAC Responses to Board Staff IRs 1 b) and c)

²² 2d ed (Toronto: Butterworths, 1983), as cited in para. 52 of *Tribute (Div Ct)*

²³ *Tribute (Div Ct)*, at paras 52-53, citing *Pfizer Co. Ltd. v. Deputy Minister of National Revenue*, [1977] 1 S.C.R. 456 at p. 460

to be employed.²⁴ This Board has already found the language in ss. 25(1) to be “clear and unambiguous”.²⁵ The Divisional Court has upheld that finding.²⁶

47. Indeed, even the tax decision from the Ontario Court of Appeal relied on by Lagasco confirms that “[w]here the words of a tax statute are precise and unequivocal, the ordinary meaning of the words predominates in the interpretive process.”²⁷

(d) Technical Meanings of “Transmission” and “Gathering” Pipelines

48. The Municipalities respectfully submit that this Board should again reject the arguments in paras. 25-30 of Lagasco’s Written Submissions, which seek to read technical or industry meanings of words into s. 25 of the *Assessment Act*.

49. In that regard, it ought to be sufficient to note that the same arguments, based on the *CSA Standard* and the *Oil, Gas and Salt Resources Act* were made in the *Tribute* case, and were not accepted either by the Board or by the Divisional Court.²⁸

50. Even accepting Lagasco’s position that the word “transmission” may have a technical or industry meaning in relation to natural gas, Lagasco’s reliance on those meanings is not supported by the words used in s. 25 of the *Assessment Act* itself. Specifically, s. 25 is not, by its terms, made applicable only to pipelines that are “transmission” pipelines in that technical or industry sense.

51. To the contrary, “pipe line” for the purposes of ss. 25(1) is expressly defined more broadly. Specifically, it is defined to mean a pipeline “for the *transportation or* transmission of gas” (emphasis added). The word “or” in this context clearly indicates that the Legislature intended the definition to include more than just “transmission” pipelines in any narrow industry sense. As the Board noted in *Tribute (OEB)*, “transportation” of gas, in the ordinary meaning of that word, is

²⁴ Lagasco’s Written Submissions, para. 22

²⁵ *Tribute (OEB)*, at p. 6

²⁶ *Tribute (Div Ct)*, paras. 51-54

²⁷ *Capcorp Planning v Ontario*, 2018 ONCA 406 at para. 44; Lagasco Book of Authorities, Tab A

²⁸ *Tribute (OEB)*, at pp. 4-5; *Tribute (Div Ct)*, paras. 49-54

broad enough to include “gathering” lines such as the Pipelines in Issue, because they “are used to transport gas from one location to another”.²⁹

52. It is not disputed (indeed it is repeatedly admitted in Lagasco’s own evidence) that even “gathering” lines of the kind in issue are used to move or “transport” gas from one location to another.³⁰

(e) Lagasco’s Reliance on the Regulations under the *Assessment Act*

53. Lagasco’s Written Submissions at pars. 31-40 make a number of technical arguments based upon how the regulations under the *Assessment Act* classify pipelines of different types. The simple answer to all these arguments is that this Board in *Tribute (OEB)* at page 6 specifically agreed with MPAC that these classifications made it clear that the general term “pipe line” used in s. 25 includes “gathering lines as well as transportation and transmission lines as those terms might be used or defined elsewhere”.

(f) Conclusions

54. The Municipalities respectfully submit that there is no reason for the Board to distinguish or to depart from the analysis in its decision in *Tribute (OEB)*, holding that the evidence in the present case is sufficient for the Board Panel herein to determine that the pipelines in issue were designated by their prior owners as transmission pipelines when they were initially installed, as required under ss. 25(2) of the *Assessment Act*.³¹

55. To the extent that Lagasco submits that the Pipelines in Issue should be exempt from municipal taxation, the Board does not have jurisdiction to decide that issue. Rather, MPAC’s answers to Board Staff IRs 1 b) and 1 c) make it clear that, if the Pipelines in Issue are not to be assessed under s. 25, the result would not be that they are not subject to assessment or municipal tax, but that is an issue for another day and another forum.

²⁹ *Tribute (Div Ct)* at pars. 51 and *Tribute (OEB)*, pp. 5-6

³⁰ Lowrie Affidavit, paras. 5-7, 12; Koller Report, paras. 18-20

³¹ *Tribute(OEB)*, pp. 6-7

56. The Municipalities expressly reserve their right to pursue available remedies elsewhere, in the event that the Municipalities' interests are affected by a decision of the Board to depart from its prior decision in *Tribute (OEB)* as affirmed in *Tribute (Div Ct)*.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

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