

# SCOTT PETRIE LLP

---

LAW FIRM

**JOHN D. GOUDY**, B.A.(HONS.), LL.B., B.C.L.  
Tel.: (519) 433-5310, Ext 236  
e-mail: [jgoudy@scottpetrie.com](mailto:jgoudy@scottpetrie.com)

August 29, 2022

VIA ELECTRONIC FILING

**Attention: Nancy Marconi, Registrar of the OEB**

Ontario Energy Board  
27<sup>th</sup> Floor, 2300 Yonge Street  
Toronto, ON M4P 1E4

Dear Registrar:

**RE: EB-2022-0086 – Enbridge Gas Inc. – Dawn to Corunna Replacement Project  
CAEPLA-DCLC Responses to OEB Staff Interrogatories**

---

In accordance with the OEB's Procedural Direction No. 4, please find enclosed for filing in the above noted proceeding the responses of CAEPLA-DCLC to OEB Staff interrogatories.

Yours truly,

SCOTT PETRIE LLP  
LAW FIRM



**John D. Goudy**

Encl.

c.c.: Parties to EB-2022-0086, *via email*

**ONTARIO ENERGY BOARD**

**IN THE MATTER OF** the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Schedule B, and in particular, sections 90(1) and 97 thereof;

**AND IN THE MATTER OF** an Application by Enbridge Gas Inc. for an Order or Orders granting leave to construct natural gas pipelines and ancillary facilities from the Township of Dawn Euphemia to St. Clair Township;

**AND IN THE MATTER OF** an Application by Enbridge Gas Inc. for an Order or Orders approving the proposed forms of agreements for Pipeline Easement and Options for Temporary Land Use.

## CAEPLA-DCLC RESPONSES TO OEB STAFF INTERROGATORIES

August 29, 2022

1. **References:** CAEPLA-DCLC evidence, page 5, paragraph 16
- Preamble:** CAEPLA-DCLC stated that the forms of Easement Agreement and the Temporary Land Use Agreement proposed by Enbridge Gas for the Dawn Corunna Replacement Project are the forms previously approved by the OEB in the Leave to Construct proceeding for the Panhandle Reinforcement Project (EB-2016-0186), which were themselves based on the landowner agreements approved by the OEB for the NPS 48 Strathroy-Lobo Project (EB-2005-0550) and the Dawn Parkway 2016 Expansion Project (EB-2014-0261). CAEPLA-DCLC submitted that, “[t]he important difference is that Enbridge has replaced the term “gross negligence” in the indemnity clause with “negligence”, seeking to reduce the indemnity protection afforded to landowners.”
- Request:**
- a) What is the difference between negligence and gross negligence?
  - b) Is CAEPLA-DCLC aware of any instances in which the difference between negligence and gross negligence made a difference in the indemnity afforded a landowner? If so, please briefly describe the circumstances of each instance.
- Responses:**
- a) CAEPLA-DCLC reserves its right to make further legal submissions on this question as part of its final written submissions. For purposes of responding to OEB Staff’s interrogatory, CAEPLA-DCLC would refer to the statement by Chief Justice Duff of the Supreme Court of Canada in *McCullough v. Murray*, [1942] S.C.R. 141 in the context of the operation of a motor vehicle: “All these phrases, gross negligence, wilful misconduct, wanton misconduct, imply conduct in which, if there is

not conscious wrong doing, there is a very marked departure from the standards by which responsible and competent people in charge of motor cars habitually govern themselves.”

Simple negligence connotes falling below the standard of care expected of a reasonable person in given circumstances (*Hill v. Hamilton-Wentworth (Regional Municipality) Police Services Board*, [2007] 3 S.C.R. 129 at para. 69). Conduct is negligent if it creates an unreasonable risk of harm (*Mustapha v. Culligan of Canada Ltd.*, [2008] 2 S.C.R. 114 at para. 7). Gross negligence requires something more – a “very marked departure” from the standard expected of a reasonable person. Multiple negligent acts can also cumulatively amount to gross negligence (*Burke v. Perry*, [1963] S.C.R. 329).

CAEPLA-DCLC notes that the *Canadian Energy Regulator Act* requires that agreements for the acquisition of lands for federally-regulated pipelines in Ontario must include: “indemnification from all liabilities, damages, claims, suits and actions resulting from the company’s operations, pipelines or abandoned pipelines, other than liabilities, damages, claims, suits and actions resulting from ... the gross negligence or wilful misconduct of the owner of the lands.” (Section 321(2)(d))

b) No. CAEPLA-DCLC is not aware of any instances where landowners have had to resort to the indemnity given by pipeline companies.