

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N

THE CORPORATION OF THE CANADIAN CIVIL LIBERTIES  
ASSOCIATION

Plaintiff

and

THE ATTORNEY GENERAL OF ONTARIO

Defendant

and

PEN CANADA

Proposed Intervenor

**FACTUM OF THE PROPOSED INTERVENOR,  
PEN CANADA**

June 22, 2020

**SINGLETON URQUHART REYNOLDS VOGEL LLP**  
150 King St. West  
Suite 2512, PO Box 24  
Toronto, ON M5H 1J9

**Peter Wardle LSO# 26412D**

pwardle@singleton.com

Tel: (416) 585-8604

**Evan Rankin LSO# 73016G**

erankin@singleton.com

Tel: (416) 585-8615

Fax: (416) 585-9458

Lawyers for the Proposed Intervenor,  
PEN Canada

**TO: GOWLING WLG (CANADA) LLP**  
1 First Canadian Place  
100 King Street West, Suite 1600  
Toronto ON M5X 1G5

**Steven Sofer LSO# 27110G**  
steven.sofer@gowlingwlg.com  
Tel: (416) 369-7240

**Sandra Barton LSO# 43220G**  
sandra.barton@gowlingwlg.com  
Tel: (416) 824-5674  
Fax: (416) 862-7661

Lawyers for the Plaintiff

**AND TO: ATTORNEY GENERAL OF ONTARIO**  
Constitutional Law Branch  
McMurtry-Scott Building  
720 Bay Street, 4th Floor  
Toronto ON M7A 2S9

**Zachary Green LSO# 48066K**  
zachary.green@ontario.ca  
Tel: (416) 992-2327  
**Ashley McKenzie LSO# 64515K**  
ashley.mckenzie2@ontario.ca  
Tel: (416) 455-9560  
Fax: (416) 326-4015

Lawyers for the Defendant

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## FACTUM OF THE PROPOSED INTERVENOR, PEN CANADA

### PART I - OVERVIEW

1. This action is of the highest constitutional importance. Has the government of Ontario compelled a group to express the government's political views on a divisive issue relating to climate change?

2. The Canadian Civil Liberties Association ("CCLA") has brought this action challenging Ontario's enactment of the *Federal Carbon Tax Transparency Act, 2019* (the "**Sticker Act**"), which requires gas station owners to affix stickers on their gas pumps which state prescribed information. There are significant penalties for failing to do so. The CCLA alleges that the stickers constitute compelled political speech, violating section 2(b) of the *Charter*.

3. The proposed intervenor, PEN Canada, is a leading freedom of expression advocacy group comprised of poets, novelists, journalists and other writers. Its distinct perspective on expression issues has permitted it to repeatedly intervene at the Supreme Court of Canada.

4. If granted leave to intervene, PEN Canada would be able to assist the Court in two ways. First, it will provide the Court with the perspective of its membership: writers whose craft and profession is reliant on the *Charter*-enshrined right to express (or not express) whatever they wish. Given the constitutional importance of this case, PEN Canada's perspective should be given an opportunity to be heard.

5. Second, PEN Canada can lend this Court its extensive experience with international and comparative human rights law relating to freedom of expression. This jurisprudence does not appear to have been considered in the few compelled speech cases which have been decided in Canada. If granted leave to intervene, PEN Canada would provide a unique perspective with respect to the international and comparative legal principles which should guide this Court's disposition of the CCLA's action and which do not appear to be raised by the existing parties.

6. The CCLA has consented to PEN Canada's motion for leave. Ontario has refused.

## **PART II - FACTS**

### **A. The Action**

7. The CCLA alleges that in June 2018, the federal government enacted the *Greenhouse Gas Pollution Pricing Act* ("GGPPA") as part of its plan to reduce greenhouse gas emissions. In provinces whose carbon pricing system does not meet certain federal requirements, the GGPPA provides for an increase in the price of gasoline.<sup>1</sup>

8. The CCLA claims that Ontario opposes the GGPPA.<sup>2</sup> In June 2019, Ontario enacted the Sticker Act. Section 2(1) of the Sticker Act states that:

2 (1) The person who is licensed under the *Technical Standards and Safety Act, 2000* to operate a retail outlet at which gasoline is sold at a gasoline pump and put into the fuel tanks of motor vehicles shall,

(a) obtain from the Minister copies of the prescribed notice with respect to the price of gasoline sold in Ontario; and

(b) ensure the notice referred to in clause (a) is affixed to each gasoline pump at the retail outlet in such manner as may be prescribed.<sup>3</sup>

9. The contents of the stickers are set in section 5(2) of the Sticker Act. The stickers

(a) shall set out information with respect to the effect of the charge referred to in subsection 17 (1) of the *Greenhouse Gas Pollution Pricing Act* (Canada) on the price of gasoline sold in Ontario, which may include information as estimated or otherwise determined by the Minister; and

(b) may set out other information with respect to the price of gasoline sold in Ontario, which may include information as estimated or otherwise determined by the Minister.<sup>4</sup>

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<sup>1</sup> Amended Statement of Claim dated October 23, 2019 ("**Amended Claim**"), Motion Record of the Proposed Intervenor dated June 18, 2020 ("**Intervenor's Record**"), Tab 3, p. 123 at para 7.

<sup>2</sup> Amended Claim, Intervenor's Record, Tab 3, p. 124 at para 9.

<sup>3</sup> *Federal Carbon Tax Transparency Act, 2019*, SO 2019, c 7, Sched 23 ("**Sticker Act**"), s 2.

<sup>4</sup> Sticker Act, *supra*, s 5.

10. Section 4 sets out penalties for failure to comply, which include a fine of up to \$10,000 per day for repeat offenders.<sup>5</sup>

11. The CCLA alleges that based on comments made by Ontario in the legislature and elsewhere, the content of the stickers are political in nature and form part of its political campaign against the GGPPA.<sup>6</sup> It alleges that the sticker imposed by the Sticker Act “constitutes compelled political speech, in violation of s. 2(b) of the *Charter* because under threat of significant fines, it legislatively requires gas station owners to express the defendants’ position” on the fuel surcharge created by the GGPPA.<sup>7</sup>

12. Ontario has defended the action and denies the CCLA’s allegations.<sup>8</sup>

13. A summary judgment motion in this matter has been scheduled for July 6, 2020.

## **B. PEN Canada**

14. PEN Canada is a leading Canadian freedom of expression advocacy group and the Canadian chapter of PEN International. The PEN Charter states in part:

PEN stands for the principle of unhampered transmission of thought within each nation and between all nations, and members pledge themselves to oppose any form of suppression of freedom of expression in the country and community to which they belong, as well as throughout the world wherever this is possible. PEN declares for a free press and opposes arbitrary censorship in time of peace. It believes that the necessary advance of the world towards a more highly organized political and economic order renders a free criticism of governments, administrations and institutions imperative. And since freedom implies voluntary restraint, members pledge themselves to oppose such evils of a free press as mendacious publication, deliberate falsehood and distortion of facts for political and personal ends.<sup>9</sup>

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<sup>5</sup> Sticker Act, *supra*, s 4.

<sup>6</sup> Amended Claim, Intervenor’s Record, Tab 3, p. 126 at para 14.

<sup>7</sup> Amended Claim, Intervenor’s Record, Tab 3, p. 127 at para 16.

<sup>8</sup> Statement of Defence of the Attorney General of Ontario dated October 25, 2019 (“**Statement of Defence**”), Intervenor’s Record, Tab 4,

<sup>9</sup> Affidavit of Brendan de Caires sworn June 18, 2020 (“**Caires Affidavit**”), Intervenor’s Record, Tab 2, p.8 at para 6.

15. Established in 1926, PEN Canada now boasts 350 members consisting of journalists, essayists, poets, novelists and other writers. Its past presidents have included luminaries such as Margaret Atwood and John Ralston Saul.<sup>10</sup>

16. PEN Canada has extensive expertise in international freedom of expression issues. It has reported on the systematic violation of expressive rights in Mexico, Honduras and India, and produced joint submissions on freedom of expression for the UN Human Rights Council as part of the Universal Periodic Reviews of Brazil, Guatemala, Hong Kong and India.<sup>11</sup> PEN Canada routinely employs international human rights law in its analyses and recommendations.

17. PEN Canada's authority in freedom of expression issues has been recognized by the Supreme Court of Canada's repeated decisions to grant it leave to intervene in *Charter* cases.<sup>12</sup>

18. In light of its expertise and the importance of this action to the law of freedom of expression, PEN Canada seeks leave to intervene as a friend of the Court, pursuant to Rule 13.02.

### **PART III - ISSUES**

19. The sole issue for determination on this motion is whether leave to intervene in this important freedom of expression case should be granted to PEN Canada.

### **PART IV - LAW AND ANALYSIS**

20. Rule 13.02 states:

Any person may, with leave of a judge or at the invitation of the presiding judge or master, and without becoming a party to the proceeding, intervene as a friend of the court for the purpose of rendering assistance to the court by way of argument.<sup>13</sup>

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<sup>10</sup> Caires Affidavit, Intervenor's Record, Tab 2, p. 9 at paras 8-9.

<sup>11</sup> Caires Affidavit, Intervenor's Record, Tab 2, p. 9 at para 11.

<sup>12</sup> Caires Affidavit, Intervenor's Record, Tab 2, p. 10 at para 12.

<sup>13</sup> *Rules of Civil Procedure*, RRO 1990, Reg 194, r 13.02.

21. In *Peel (Regional Municipality) v Great Atlantic & Pacific Co. of Canada Ltd.* (“**Peel**”), the Court of Appeal adopted the following considerations for deciding whether to grant leave to intervene as a friend of the Court:

- (a) the nature of the case;
- (b) the issues involved;
- (c) the likelihood that the proposed intervenor will make a useful and distinct contribution not otherwise offered by the parties; and
- (d) whether the intervention will cause injustice to the parties or undue delay.<sup>14</sup>

22. In constitutional cases like this one, the rules governing leave motions are more relaxed. This approach “ensures that the court will have the benefit of various perspectives of the historical and sociological context, as well as policy and other considerations that bear on the validity of legislation.”<sup>15</sup> Indeed, in a *Charter* case, it has been recognized that it is important for the court “to receive a diversity of representations reflecting the wide-ranging impact of its decision.”<sup>16</sup>

23. The four considerations above are the overarching principles applicable to motions for leave to intervene. In *Bedford v Canada (Attorney General)* (“**Bedford**”), the Court of Appeal also held, by way of guidance, that where the intervention is in a *Charter* case, “usually at least one of three criteria is met by the intervenor: it has a real substantial and identifiable interest in the subject matter of the proceedings; it has an important perspective distinct from the immediate parties; or it is a well-recognized group with a special expertise and a broadly identifiable membership base.”<sup>17</sup>

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<sup>14</sup> [Peel \(Regional Municipality\) v Great Atlantic & Pacific Co. of Canada Ltd. \(1990\), 74 OR \(2d\) 164](#) at 167. See also [Leroux v Her Majesty The Queen in Right of the Province of Ontario, 2020 ONSC 730](#) (“**Leroux**”) at para 22.

<sup>15</sup> [Authorson \(Guardian of\) v Canada \(Attorney General\) \(2001\), 147 OAC 355 \(Ont CA\)](#) (“**Authorson**”) at para 7.

<sup>16</sup> [Trinity Western University v Law Society of Upper Canada, 2014 ONSC 5541](#) at para 9.

<sup>17</sup> [Bedford v Canada \(Attorney General\), 2009 ONCA 669](#) at para 2.



24. Each of the four *Peel* considerations clearly militate towards granting PEN Canada leave to intervene. It is also clear that all three of the guiding criteria identified in *Bedford* are present.

#### **A. Nature of the Case**

25. The “nature of the case” consideration asks where a dispute falls on the spectrum between private litigation and constitutional or public litigation.<sup>18</sup> The closer a case is to being a private dispute, the higher the burden will be on the party seeking to intervene as amicus.<sup>19</sup>

26. In this action, the dispute is not private. Rather, the CCLA has made a very serious allegation against Ontario which implicates one of the fundamental rights undergirding our democracy: freedom of expression. Specifically, the CCLA alleges that Ontario has compelled a group to express Ontario’s political position on the GGPPA. The precedent set by this case will have serious implications far beyond either that statute or the owners of gas stations.

27. The extremely public nature of this case warrants the perspective of PEN Canada; freedom of expression exists at the core of the professional and personal identities of its membership.

#### **B. The Issues Involved**

28. It should be noted that the “nature of the case” and “issues involved” are often considered together.<sup>20</sup> Very recently, the Divisional Court observed that “[t]he cases have held that granting leave to intervene may be warranted in cases that involve constitutional issues or issues of public interest that transcend the dispute between the parties.”<sup>21</sup>

29. The main issues in this action are matters of *Charter* interpretation, including:

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<sup>18</sup> [Bhajan v Ontario \(Children’s Lawyer\)](#), 2010 ONCA 560 at para 6.

<sup>19</sup> [Authorson](#) at para 9.

<sup>20</sup> [Leroux](#) at para 25.

<sup>21</sup> [Leroux](#) at para 26.

- (a) The interpretation and application of section 2(b) of the *Charter* in the context of compelled speech.
- (b) How section 1 ought to be interpreted and applied in cases of governmentally compelled speech.

30. These issues are of fundamental public importance given the importance of free expression to the proper functioning of our democratic institutions. They clearly “transcend the dispute between the parties”.<sup>22</sup>

31. PEN Canada submits that the Court would benefit from its international and comparative human rights perspective on these issues. As explained in greater detail below, the Supreme Court of Canada has recognized the importance of the international human rights perspective in *Charter* cases. PEN Canada is in an ideal position to lend its assistance to the Court in this respect.

32. PEN Canada takes no position on the factual or evidentiary issues involved in the action.

(i) ***PEN Canada Will Make a Useful and Distinct Contribution Not Otherwise Offered by the Parties***

33. The proposed intervener must have a “real, substantial and identifiable interest in the subject matter, and an important and a distinct perspective to be articulated that is different from that of the parties.” This requirement will be more easily met by an organization which is a “well-recognized group with special expertise and a broadly identifiable membership base.”<sup>23</sup> Further, the Courts have recognized the desirability of having “all of the relevant possibilities brought to its attention, including submissions on the impact of its judgment, not only on the parties, but on those not before the court.”<sup>24</sup>

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<sup>22</sup> [Leroux](#) at para 26.

<sup>23</sup> [Leroux](#) at para 28.

<sup>24</sup> [Leroux](#) at para 28.

**(ii) *PEN Canada Has a Real, Substantial, and Identifiable Interest in the Action***

34. PEN Canada has a well-recognized interest in defending freedom of expression spanning nearly a century. The PEN Charter explains that it “believes that the necessary advance of the world towards a more highly organized political and economic order renders a free criticism of governments, administrations and institutions imperative.”<sup>25</sup>

35. This litigation touches directly on that imperative. Indeed, compelled speech is directly contrary to PEN Canada’s belief in the “principle of unhampered transmission of thought”.<sup>26</sup> PEN Canada therefore has a clear interest in ensuring the proper adjudication of compelled speech allegations.

36. Moreover, PEN Canada’s membership consists of writers. Freedom of expression is obviously central to that membership’s ability to function.

37. PEN Canada’s substantial interest in freedom of expression matters has been recognized by the Supreme Court of Canada’s repeated decisions to grant it leave to intervene, including in:

- *Little Sisters Book and Art Emporium v Canada*, 2000 SCC 69;
- *Grant v Torstar*, 2009 SCC 61;
- *R v National Post*, 2010 SCC 16;
- *Crookes v Newton*, 2011 SCC 47; and
- *R v Vice Media Canada Inc.*, 2018 SCC 53.<sup>27</sup>

38. In these circumstances, it is clear that PEN Canada has a real, substantial, and identifiable interest in the action.

**(iii) *PEN Canada Will Provide the Court with a Distinct Perspective***

39. PEN Canada’s distinct perspective is twofold.

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<sup>25</sup> Caires Affidavit, Intervenor’s Record, Tab 2, p. 8 at para 6.

<sup>26</sup> Caires Affidavit, Intervenor’s Record, Tab 2, p. 8 at para 6.

<sup>27</sup> Caires Affidavit, Intervenor’s Record, Tab 2, p. 10 at para 12.

40. First, PEN Canada’s membership consists of writers, including novelists, poets, and journalists.<sup>28</sup> These various types of writers implicate all three of the values underlying the expression guarantee: (i) seeking and attaining the truth, (ii) participation in social and political decision-making, and (iii) individual self-fulfillment and human flourishing.<sup>29</sup> Given the importance of these values to the section 2(b) analysis, it is important to ensure that this viewpoint is well-represented.

41. If leave is not granted, the Court may be forced to adjudicate this case with an incomplete understanding of the implications of its decision. As the Court of Appeal has recognized, it is desirable to have “all of the relevant possibilities brought to its attention, including submissions on the impact of its judgment, not only on the parties, but on those not before the court”.<sup>30</sup>

42. Second, and as explained in greater detail below, PEN Canada’s extensive experience with international human rights law allows it to bring a distinctly international perspective to the Court. Counsel for PEN Canada has had discussions with the CCLA’s counsel in this respect. Given the limited resources of the CCLA, the CCLA has agreed to defer to PEN Canada for submissions on international and comparative law.<sup>31</sup>

*(iv) PEN Canada’s Expertise*

43. PEN Canada’s expertise in international and comparative human rights is undeniable: it has published extensively on expression issues in a variety of countries including Mexico, Honduras, and India, often applying international human rights law in its reports.<sup>32</sup> For example, in *Imposing Silence: The Use of India’s Laws to Suppress Free Speech*, PEN Canada (and PEN

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<sup>28</sup> Caires Affidavit, Intervenor’s Record, Tab 2, p. 9 at para 9.

<sup>29</sup> [Irwin Toy Ltd. v Quebec \(Attorney General\)](#), [1989] 1 SCR 927 (SCC) at 976.

<sup>30</sup> [Louie v Lastman \(2001\)](#), 208 DLR (4<sup>th</sup>) 380 (Ont CA) at para 12; *Leroux*, *supra*, para 12.

<sup>31</sup> Caires Affidavit, Intervenor’s Record, Tab 2, p. 11 at para 18.

<sup>32</sup> Caires Affidavit, Intervenor’s Record, Tab 2, p. 9 at para 10.

International) reviewed India's criminal laws in detail and compared their operation to the international standards contained in the *International Covenant on Civil and Political Rights* (the "ICCPR").<sup>33</sup>

44. PEN Canada has also authored joint submissions on freedom of expression for the UN Human Rights Council as part of four countries' Universal Periodic Review.<sup>34</sup>

45. The organization's experience extends beyond report-writing. PEN Canada's Executive Director (and affiant in this motion) has significant field experience, including coordinating training seminars for Indigenous female journalists in Guatemala<sup>35</sup> and interviewing witnesses of rights abuses.

46. Given the Supreme Court of Canada's repeated admonishment that the *Charter* should be "presumed to provide at least as great a level of protection as is found in the international human rights documents that Canada has ratified",<sup>36</sup> PEN Canada's expertise in the interpretation and application of those documents (as well as in international human rights law more generally) will greatly benefit the Court.

47. PEN Canada also has expertise in comparative law and is able to draw from its various sister-chapters in other jurisdictions to highlight analogous cases for the Court's review.

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<sup>33</sup> Exhibit "D" to the Caires Affidavit, Intervenor's Record, Tab 2D, pp 72-79.

<sup>34</sup> Caires Affidavit, Intervenor's Record, Tab 2, p. 9 at para 11.

<sup>35</sup> Caires Affidavit, Intervenor's Record, Tab 2, p. 7 at para 1.

<sup>36</sup> [Divito v Canada \(Public Safety and Emergency Preparedness\), 2013 SCC 47](#) at para 23.

(v) ***PEN Canada Will Not Repeat Issues and Arguments***

48. PEN Canada acknowledges that a “contribution is not useful if it simply repeats issues and arguments put forward by the parties although some overlap may be permitted.”<sup>37</sup>

49. As noted above, counsel for the CCLA and for PEN Canada have already engaged in discussions regarding the case. The CCLA has agreed to defer to PEN Canada in respect of international and comparative legal issues.<sup>38</sup> Consequently, it is not anticipated that the submissions of PEN Canada will repeat those of the CCLA. Indeed, a review of the CCLA’s factum confirms that it has cited only Canadian and American authorities.<sup>39</sup>

50. Unlike the CCLA, PEN Canada’s submissions will review international and comparative case law to assist the Court in considering:

- (a) whether silence where there is no attempt to convey meaning through that silence ought to be protected under section 2(b) of the *Charter*.
- (b) whether an individual’s identification with a compelled message and an opportunity to disavow that message are relevant to determining whether there has been a breach of section 2(b) of the *Charter*; and
- (c) how international law, including especially the *ICCPR*, should shape the interpretation of section 1 of the *Charter* in this case.

51. The international legal perspective on these issues will not be canvassed unless PEN Canada is granted leave to intervene.

(vi) ***The Intervention Will Not Cause Injustice or Undue Delay***

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<sup>37</sup> [Leroux](#) at para 28.

<sup>38</sup> Caires Affidavit, Intervenor’s Record, Tab 2, p. 11 at para 18.

<sup>39</sup> Factum of the Moving Plaintiff dated May 14, 2020, Intervenor’s Record, Tab 5.

52. This motion was originally scheduled in cooperation with Ontario's counsel to proceed on April 16, 2020. However, due to the COVID-19 pandemic, this date was adjourned.

53. In January, 2020, counsel for the CCLA and the Ontario agreed to resolve this action by way of summary judgment motion scheduled to be heard on July 6, 2020. The court has recently indicated that the matter will likely proceed on this date despite the COVID-19 pandemic.

54. PEN Canada only learned of this date on June 18, 2020 from the CCLA. Consequently, it became necessary to have this motion heard urgently.

55. This causes no injustice to Ontario. Counsel for PEN Canada provided draft materials to Ontario on January 17, 2020. Ontario has therefore long been aware of the issues that PEN Canada intends to raise.

56. In *Leroux v Her Majesty The Queen in Right of the Province of Ontario*, 2020 ONSC 730, the Court addressed a similar situation in which the appeal in which leave was sought had already been scheduled. The Court nevertheless determined that the proposed intervention would not cause injustice or prejudice because a factum could be delivered rapidly and the intervention only engaged legal issues; no new evidence was required. Further, the plaintiff did not object to Ontario filing a factum responding to the arguments raised in its intervention.<sup>40</sup>

57. PEN Canada is positioned to file a factum with sufficient time for Ontario to respond by July 6, 2020. The issues raised are confined to issues of law; PEN Canada accepts the record as it stands.

58. Moreover, there is no concern about duplication of submissions. As stated above, PEN Canada's submissions will not overlap with those of the CCLA or Ontario. PEN Canada is not

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<sup>40</sup> [Leroux](#) at paras 39-41.

raising any new issues: the focus will remain on the interpretation and application of sections 2(b) and 1.

59. There is no injustice in granting leave to intervene and it will not cause undue delay.

**C. Conclusion**

60. In light of the gravity of the allegations made by the CCLA, it is important that the Court be provided with a clear understanding of how compelled speech allegations are analyzed within international law and in other jurisdictions. PEN Canada is perfectly positioned to provide that assistance to the Court.

**PART V - ORDER REQUESTED**

61. PEN Canada respectfully requests this Court grant it leave to intervene in the action and summary judgment motion pursuant to Rule 13.02 on the following conditions:

- (a) PEN Canada will not seek costs and the other parties will not seek costs against it;
- (b) At the summary judgment motion scheduled for July 6, 2020 (or any other dispositive hearing scheduled thereafter), PEN Canada will have the right to (i) file a factum not exceeding 25 pages, and (ii) make oral submissions not exceeding 45 minutes.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 22<sup>nd</sup> day of June, 2020.

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Peter Wardle



**SINGLETON URQUHART REYNOLDS VOGEL LLP**

150 King St. West  
Suite 2512, PO Box 24  
Toronto, ON M5H 1J9

**Peter Wardle LSO# 26412D**

pwardle@singleton.com

Tel: (416) 585-8604

**Evan Rankin LSO# 73016G**

erankin@singleton.com

Tel: (416) 585-8615

Fax: (416) 585-9458

Lawyers for the Proposed Intervenor,  
PEN Canada

**SCHEDULE “A”****LIST OF AUTHORITIES**

1. [\*Peel \(Regional Municipality\) v Great Atlantic & Pacific Co. of Canada Ltd.\* \(1990\), 74 OR \(2d\) 164](#)
2. [\*Leroux v Her Majesty The Queen in Right of the Province of Ontario\*, 2020 ONSC 730](#)
3. [\*Authorson \(Guardian of\) v Canada \(Attorney General\)\* \(2001\), 147 OAC 355 \(Ont CA\)](#)
4. [\*Trinity Western University v Law Society of Upper Canada\*, 2014 ONSC 5541](#)
5. [\*Bedford v Canada \(Attorney General\)\*, 2009 ONCA 669](#)
6. [\*Bhajan v Ontario \(Children’s Lawyer\)\*, 2010 ONCA 560](#)
7. [\*Lavigne v Ontario Public Service Employees Union\*, \[1991\] 2 SCR 211 \(SCC\)](#)
8. [\*Irwin Toy Ltd. v Quebec \(Attorney General\)\*, \[1989\] 1 SCR 927 \(SCC\)](#)
9. [\*Louie v Lastman\* \(2001\), 208 DLR \(4<sup>th</sup>\) 380 \(Ont CA\)](#)
10. [\*Divito v Canada \(Public Safety and Emergency Preparedness\)\*, 2013 SCC 47](#)

## SCHEDULE “B”

### TEXT OF STATUTES, REGULATIONS & BY – LAWS

*The Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11*

#### RIGHTS AND FREEDOMS IN CANADA

1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

#### FUNDAMENTAL FREEDOMS

2. Everyone has the following fundamental freedoms:

(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication.

*Greenhouse Gas Pollution Pricing Act - 17 (1)*

#### GENERAL APPLICATION OF CHARGE TO FUEL AND COMBUSTIBLE WASTE

##### Charge — delivery by registered distributor

**17 (1)** Subject to this Part, a particular registered distributor in respect of a type of fuel that delivers, at a particular time, fuel of that type in a listed province to another person must pay to Her Majesty in right of Canada a charge in respect of the fuel and the listed province in the amount determined under section 40. The charge becomes payable at the particular time.

*Federal Carbon Tax Transparency Act, 2019, SO 2019, c 7, Sched 23*

#### NOTICE ON GASOLINE PUMPS

**2 (1)** The person who is licensed under the *Technical Standards and Safety Act, 2000* to operate a retail outlet at which gasoline is sold at a gasoline pump and put into the fuel tanks of motor vehicles shall,

- (a) obtain from the Minister copies of the prescribed notice with respect to the price of gasoline sold in Ontario; and
- (b) ensure the notice referred to in clause (a) is affixed to each gasoline pump at the retail outlet in such manner as may be prescribed.

## **OFFENCES - CONTRAVENTION OF NOTICE REQUIREMENTS**

**4** (1) Every person who contravenes subsection 2 (1) is guilty of an offence and on conviction is liable,

(a) in the case of an individual,

(i) for a first offence, to a fine of not more than \$500 for every day or part of a day on which the offence occurs or continues, and

(ii) for a second or subsequent offence, to a fine of not more than \$1,000 for every day or part of a day on which the offence occurs or continues; and

(b) in the case of a corporation,

(i) for a first offence, to a fine of not more than \$5,000 for every day or part of a day on which the offence occurs or continues, and

(ii) for a second or subsequent offence, to a fine of not more than \$10,000 for every day or part of a day on which the offence occurs or continues.

### **Obstruct inspection**

(2) Every person who contravenes subsection 3 (2) is guilty of an offence and on conviction is liable to a fine of not less than \$500 and not more than \$10,000.

### **Duty of directors and officers**

(3) A director or officer of a corporation that is licensed under the *Technical Standards and Safety Act, 2000* to operate a retail outlet referred to in subsection 2 (1) shall take all reasonable care to ensure that subsection 2 (1) is complied with.

### **Contravention of duty of directors and officers**

(4) A person who has the duty imposed by subsection (3) and fails to carry it out is guilty of an offence and on conviction is liable to the penalty provided for in subsection (1).

### **Same**

(5) A person may be prosecuted and convicted under subsection (4) even if the corporation has not been prosecuted or convicted.

## REGULATIONS

**5 (1)** The Lieutenant Governor in Council may make regulations for the purpose of carrying out the provisions of this Act, including,

- (a) prescribing anything that may be prescribed under this Act;
- (b) providing for time limits within which the requirements under clauses 2 (1) (a) and (b) must be complied with.

### Contents of the prescribed notice

(2) The notice prescribed under subsection (1) for the purpose of clause 2 (1) (a),

- (a) shall set out information with respect to the effect of the charge referred to in subsection 17 (1) of the Greenhouse Gas Pollution Pricing Act (Canada) on the price of gasoline sold in Ontario, which may include information as estimated or otherwise determined by the Minister; and
- (b) may set out other information with respect to the price of gasoline sold in Ontario, which may include information as estimated or otherwise determined by the Minister.

***Rules of Civil Procedure, RRO 1990, Reg 194***

### LEAVE TO INTERVENE AS FRIEND OF THE COURT

**13.02** Any person may, with leave of a judge or at the invitation of the presiding judge or master, and without becoming a party to the proceeding, intervene as a friend of the court for the purpose of rendering assistance to the court by way of argument. R.R.O. 1990, Reg. 194, r. 13.02; O. Reg. 186/10, s. 1.

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at **TORONTO**

**FACTUM OF THE PROPOSED INTERVENOR,  
PEN CANADA**

**SINGLETON URQUHART REYNOLDS VOGEL LLP**

150 King St. West

Suite 2512, PO Box 24

Toronto, ON M5H 1J9

**Peter Wardle LSO# 26412D**

[pwardle@singleton.com](mailto:pwardle@singleton.com)

Tel: (416) 585-8604

**Evan Rankin LSO# 73016G**

[erankin@singleton.com](mailto:erankin@singleton.com)

Tel: (416) 585-8615

Fax: (416) 585-9458

Lawyers for the Proposed Intervenor,  
PEN Canada

65001.012