



Ontario's Climate Change Discussion Paper 2015

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Submitted by: The Ontario Bar Association,
Environmental Law Section



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Introduction

The Ontario Bar Association (the “OBA”) welcomes the opportunity to provide input to the Ministry of the Environment and Climate Change (the “Ministry”) on “Ontario’s Climate Change Discussion Paper, 2015” (the “Discussion Paper”) released February 12, 2015.

The OBA supports the Ministry in its efforts to move forward the much-anticipated greenhouse gas (“GHG”) emissions reduction regime, including a regulated price on carbon and other measures to support reducing GHGs and adapting to climate changes. If appropriately implemented, these measures should support the Province’s stated environmental goals while providing clarity for industry and facilitate the transition to the low-carbon economy.

The OBA

Established in 1907, the OBA is the largest legal advocacy organization in the province, representing some 16,000 lawyers, judges, law professors and law students in Ontario. OBA members practice law in no fewer than 38 different sectors. In addition to providing legal education for its members, the OBA has assisted government and other policy makers with countless policy initiatives - both in the interest of the legal profession and in the interest of the public.

This submission was prepared by the OBA Environmental Law Section (the “Section”). The Section has over 300 members, including leading practitioners with considerable expertise and experience in how environmental laws and policy are interpreted and applied. Section members represent a wide variety of stakeholders, including individuals, corporations, municipalities, land owners, and environmental non-profit organizations.

Comments

The OBA supports the development of climate change policy for the Province that is fair across all affected economic sectors and provides regulatory clarity, consistency and transparency.

We have provided similar comments related to previous GHG emission reduction consultation documents. The comments in this submission echo the OBA’s previous submissions related to EBR Registry Number 011-7940 submitted in 2013,¹ and EBR Registry Number 010-6740 and 010-6467 submitted in 2009.

¹ OBA Submission “*Greenhouse Gas Emissions Reductions in Ontario: A Discussion Paper - EBR Registry Number 011-7940*” (April 21, 2013) Weblink: <http://www.oba.org/CMSPages/GetFile.aspx?guid=1e833c91-1c5f-464e-9415-0c232125f4a4>



We applaud the Ministry's recognition of the seriousness of climate change, the importance of addressing the challenges posed by climate change and the need for transformational economic changes in response. We look forward to providing further comments on specific mechanisms and regulatory proposals when they are available.

We submit that any policy development and regulatory regime aimed at addressing the challenges set out in the Discussion Paper must:

1. Be fair, transparent, easily understood and predictable, supporting the Rule of Law;
2. Include a comprehensive and equitable carbon price (addressing any market failures with flexible mechanisms); and
3. Rely on sound science to clarify standards that should be applied to decision-making in light of the range of predicted climate impacts.

In our view, industry can innovate when given clear, transparent, predictable rules, especially when there is opportunity for market linkages. Avoidance of market manipulation through well-designed administration and oversight must be a priority and can be properly managed through smart regulation.

Regard should be given to other jurisdictions to ensure that Ontario is providing a range of compliance options and competitive incentives. Ontario's program should harmonize and avoid duplication with other programs. It should be both clear to regulated parties and transparent to the public. It should also be designed to facilitate effective and fair enforcement.

We are pleased that important issues related to aboriginal communities, including the inclusion of traditional knowledge, along with the recognition of the key role of municipalities in dealing with these challenges has been highlighted. The OBA has specialized expertise in legal issues related to aboriginal groups and municipalities and we look forward to considering the details of the Ministry's proposal.

Adaptation to the changing climate is urgent and requires government leadership. Current legal uncertainty related to future regulatory regimes and adapting to known and predicted climate impacts create unnecessary legal risk, is counter-productive, and exposes the Ontario economy to large future risks.

We hear from many clients that they are waiting for government to clarify the rules. The development of appropriate baselines and new standards based on predictive modeling should be prioritized, particularly for matters such as stormwater management, land-use planning and electricity infrastructure. Current planning and assessment regimes require modification now and as climate science develops. The province should also work with the insurance industry to ensure



that insurance remains available, to the extent practicable, for residential and commercial property owners and for infrastructure.

The OBA does not take a position on the market mechanism to best achieve the province's stated carbon pricing goals. In previous submissions, the OBA commented on a Western Climate Initiative based cap and trade system, which leads to emissions reductions certainty in the short term and can be designed to ensure broad scope of coverage. We also submitted that such program should allow for smart and efficient linkages with neighboring jurisdictions. We look forward to providing specific comments on the chosen mechanism when more details emerge and can offer a breadth of expertise, including with respect to trade law issues.

Conclusion

Once again, the OBA supports the Ministry's initiative in developing a climate change policy for the Province and, in particular, to set a price on carbon. We look forward to providing specific comments on the mechanism and regulatory proposals once released.