

Case overview

Environmental groups have filed an urgent judicial review of the Ford government's actions surrounding the end of the province's cap and trade program. Ecojustice lawyers, in partnership with the uOttawa-Ecojustice Environmental Law Clinic, have filed the case on behalf of Greenpeace Canada.

The case argues that the Ford government has illegally failed to consult the public on a regulation ending Ontario's cap and trade program and a proposed bill that would remake the province's legislative regime for combatting climate change. Public participation in the development of environmentally significant regulations and legislation is required under the *Environmental Bill of Rights* (EBR).

The case also argues that the Court should quash the regulation for being inconsistent with the very purpose of the *Climate Change Mitigation and Low-carbon Economy Act, 2016* (the Act). The Act legislates Ontario's targets for reducing greenhouse gas pollution that causes climate change. The cap and trade program was the primary means of achieving the targets.

Background information

Ontario passed the *Climate Change Mitigation and Low-carbon Economy Act* and Cap and Trade Program regulation in 2016. The Act aims to lower GHG emissions by putting a price on carbon pollution through the cap and trade program and other measures outlined in a "climate change plan".

In general, cap and trade programs work by putting caps on the amount of pollution that companies in certain industries can emit. If companies exceed those limits they are required to buy emission allowances at auctions or from other companies.

Cap and trade is one form of carbon pricing. Other forms include a carbon tax or a carbon fee-and-dividend system. All forms of carbon pricing aim to combat climate change by increasing the price of activities that pollute the atmosphere with carbon dioxide and other greenhouse gases.

Under the Act, money raised from Ontario's cap and trade program was deposited into a new Greenhouse Gas Reduction Account. The account invested money in green projects and initiatives that reduce emissions. Examples include home energy retrofits, like insulation, energy efficient windows, smart thermostats as well as money for school repairs.

During the 2018 provincial election Premier Ford campaigned on ending Ontario's "cap and trade carbon tax" as part of his plan to reduce gas prices by 10 cents per litre. Ford's cabinet filed Ontario Regulation 386/18 (Regulation) at their very first meeting on July 3, essentially gutting the operational elements of Ontario's cap and trade program in one fell swoop.

The Minister of Environment, Conservation and Parks chose not to consult the public as required under the EBR, claiming instead that the 2018 Ontario election was a process that was "substantially equivalent" to the 30-day consultation process required by law.

On July 25, 2018, the Minister introduced Bill 4, *Cap and Trade Cancellation Act, 2018*, which would repeal the *Climate Change Mitigation and Low-carbon Economy Act, 2016*, including Ontario's legislated targets for reducing greenhouse gas pollution. The Minister has yet to provide for the public consultation on Bill 4 required by the EBR.

This lawsuit alleges that the Minister has breached his legal duty under the EBR to consult the public about both the Regulation and Bill 4. It also seeks to have the Court quash the regulation because it is inconsistent with, and fundamentally undermines, the purpose of the Act.

The lawsuit further alleges that the Minister illegally invoked an exception to bypass public consultation on the Regulation, claiming that the 2018 Ontario election was a process that was “substantially equivalent” to the 30-day consultation process mandated by the EBR.

The Minister has a legal duty under the EBR to provide for public notice and comment on proposed regulations and legislation that could have “a significant effect on the environment” at least thirty days before implementation (Sections 15 and 16 of the EBR). This 30-day notice and comment period allows for Ontario residents, community groups, businesses and other stakeholders to participate in the development of environmentally significant regulations and legislation in Ontario. The EBR is signature environmental legislation unique to the province of Ontario.