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LAW OF CLIMATE CHANGE IN CANADA

Dennis Mahony

Release 2021-1, April 2021

Publisher's Special Release Note 2021

The pages in this work were reissued in April 2021 and all the pages carry that date in the release line. Please note that we have not reviewed the content on every page of this work in this current release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to heading numbering has occurred. Please refer to the Correlation Table in the front matter if you wish to confirm references.

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This text provides an in-depth description and analysis of the complex and ever-expanding array of domestic and international laws and initiatives addressing climate change in Canada. Containing comprehensive coverage of provincial and federal legislation and policy developments from across Canada, *The Law of Climate Change in Canada* also describes in detail some of the many emerging climate change law subdisciplines, including: Carbon finance; Litigation; Real property; Tax and Securities law and Disclosure.

Chapter 12, Carbon Finance, has been extensively updated to reflect changes in law and policy.

Highlights:

- **Ontario Climate Change Law and Policy – Legal Framework Introduction; Constitutional Framework** — As part of its 2018 Environment Plan, the province enacted Regulation 241/19 (*Greenhouse Gas Emissions Performance Standards*) in July 2019. The Regulation introduces the Emissions Performance Standards (“EPS”) program as a substitute for the federal OBPS under the *Pollution Pricing Act*, as discussed further in § 9:40. The EPS is intended to limit GHG emissions by industrial facilities in Ontario and has been accepted by the federal government as meeting the minimum stringency requirements under the *Pollution Pricing Act*. At the time of writing, the details of the transition from the *Pollution Pricing Act* to the EPS program are being determined and subject to the decision of the Supreme Court of Canada on the constitutionality of the *Pollution Pricing Act*. However, once in place, the EPS program will impose an annual GHG emissions limit on industrial facilities based on EPS and require facilities to reduce emissions to below the limit or pay for exceeding the applicable limits.
The EPS program will apply to facilities with emissions of at least 50,000 tonnes of CO₂e per year in those sectors covered by the federal OBSP, including cement, chemicals, power generation, food (i.e., sugar, corn milling), industrial, food and fuel ethanol, metal tubes and steel, lime, metal mining or milling, mineral products, natural gas liquids, natural gas transmission, non-ferrous metal smelting and refining, petroleum refineries, oilseeds processing, pulp and paper, upstream oil extraction and upgrading, and vehicle manufacturing. The EPS will also allow voluntary opt-in by facilities with annual emissions between 10,000 tonnes of CO₂e and 50,000 tonnes of CO₂e per year.
- **Ontario Climate Change Law and Policy – Specific legal and policy response – Mitigation – Carbon Pricing Initiative** —Following the cancellation of the cap-and-trade

program, the province enacted Ontario Regulation 241/19 (*Greenhouse Gas Emissions Performance Standards*) on July 4, 2019, as an alternative to the federal OBSP under the *Pollution Pricing Act*. The regulation sets out the EPS program, intended to regulate and reduce GHG emissions from industrial facilities throughout Ontario by setting an annual emissions limit based on emissions performance standards that will get stricter each year. Facilities will be required to reduce emissions to below the prescribed limit or pay for exceeding such limit.

- **Ontario Climate Change Law and Policy – Specific legal and policy response – Mitigation – Complementary Initiatives** —In 2020, the province revoked the green diesel standard and the green gasoline standard, replacing these with a new regulation that maintains separate renewable content for gasoline and diesel. Ontario currently requires an average of 10% renewable content in regular grade gasoline, which will be increased to 11% in 2025, 13% in 2028 and 15% in 2030. The new regulation has maintained the 4% renewable requirement for diesel.

ProView Developments

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- The opening page is now the title page of the book as you would see in the print work
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- The Table of Cases, Table of Statutes and Index are now in PDF with no searching and linking
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- Images are generally greyscale and size is now adjustable