



ENVIRONMENT IN THE COURTROOM II

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Enforcement and Withdrawal under the California–Quebec (and Not Ontario) Cap-and-Trade Linkage Agreement

*David V. Wright*¹

Introduction

Federal governments in Canada and the United States continue to face challenges in developing and implementing nation-wide carbon pricing mechanisms. While the Canadian context has changed with the introduction of the *Greenhouse Gas Pollution Pricing Act*,² there continues to be no comprehensive nation-wide regime in the United States. In this context, sub-national initiatives continue to define much of climate law and policy in North America, with the California–Quebec–Ontario linkage breaking transnational ground in recent years.³ Such an approach, however, remains highly experimental in nature.⁴

Two dimensions of critical importance to the efficacy of any emissions trading regime are enforcement and withdrawal. The California–Quebec–Ontario linkage provides an opportunity to observe these dimensions in action. Ontario's withdrawal, for better or worse, marks a timely opportunity to consider the formal withdrawal process under the linkage, as well as collateral legal implications.

The first part of this chapter provides a short overview of the California–Quebec–Ontario linkage, including its origins in the Western Climate Initiative (WCI) and evolution into a functioning multi-jurisdiction emissions trading regime. Next, the chapter focuses on enforcement under the

linkage, discussing the reciprocal nature of the arrangement and the enforcement regime in each jurisdiction. For completeness, Ontario is included in that discussion, notwithstanding its withdrawal in June 2018. The chapter then provides a short overview of the linkage withdrawal mechanism before then moving on to identify some of the legal implications flowing from Ontario's withdrawal. Finally, the conclusion provides reflections on this sub-national-led North American regime and future directions.

Overview of the California-Quebec-Ontario Linkage Agreement

Cooperation between Canadian provinces and US states on GHG emissions reductions has been taking place for more than a decade.⁵ For example, at its peak, the Regional Greenhouse Gas Initiative included nine states as participants and six provinces as observers in anticipation of eventually linking cap-and-trade markets.⁶ Meanwhile, in 2008 the US west coast states and the province of British Columbia entered into the Pacific Coast Collaborative Agreement (PCCA),⁷ and adopted the Pacific Coast Action Plan on Climate and Energy in 2013.⁸ The latter included stated intentions of linking programs,⁹ though no carbon markets have linked under this umbrella to date.

The longest-running state-province collaboration, and most relevant for the purposes of this paper, is the WCI. The WCI began in 2007 as an agreement across several western US states but expanded in subsequent years to include the Canadian provinces of British Columbia, Manitoba, Ontario, and Quebec.¹⁰ These eleven jurisdictions collectively produced the 2008 "Design Recommendations for the WCI Regional Cap and Trade Program"¹¹ and the 2010 "Design for the WCI Regional Program."¹² The objective was to then put in place an inter-jurisdictional market-based program to reach agreed-upon emission reduction targets.¹³ As was observable in June 2018, most WCI members did not follow through to the point of implementing linked cap-and-trade systems under the agreed-upon timeline.¹⁴ The exceptions, of course, are Quebec and California, and for a brief period, Ontario. With much fanfare,¹⁵ these jurisdictions carried the collaboration through to a fully operational multi-jurisdiction, cross-border cap-and-trade system. California and Quebec signed a linkage agreement in September 2013, with the linkage becoming formally operational on January 1, 2014. In September 2017, Ontario entered into the linkage agreement, and on January 1, 2018, Ontario formally joined the market (though the provincial cap-and-trade market had been

functioning since January 2017), only to withdraw in June 2018, soon after a change of government following the provincial election.¹⁶ In May 2018, the three parties held the fifteenth joint cap-and-trade auction,¹⁷ and in August 2018, Quebec and California held the sixteenth joint auction, that one without Ontario.¹⁸ In May 2020, Quebec and California held the twenty-third joint auction.¹⁹

At the core of the linkage is the formal agreement: *Agreement between the California Air Resources Board and the Gouvernement du Québec Concerning the Harmonization and Integration of Cap-and-Trade Programs for Reducing Greenhouse Gas Emissions* (Linkage Agreement or Agreement).²⁰ The Linkage Agreement was updated when Ontario joined.²¹ The Agreement codifies the collaborative arrangements between the parties through 23 Articles spread across three chapters: General Provisions, Harmonization and Integration Process, and Operation of the Agreement.²² The Agreement sets the rules in areas such as consultation, regulatory harmonization, recognition and trade of compliance instruments, joint auctions, supervision and enforcement, administrative and technical support, confidentiality, withdrawal, amendments, resolution of differences, and coming into force.²³

However, while the Agreement is the centrepiece of the integrated cap-and-trade markets, it represents just one piece in a broader framework. This system is reciprocal in nature and is comprised of statutes, regulations, and guidance put in place by each jurisdiction. For example, California's legal context is underpinned by the 2006 *Global Warming Solutions Act* (typically and hereinafter referred to as AB 32), which empowered the California Air Resources Board (CARB) to "adopt a regulation that establishes a system of market-based declining annual aggregate emission limits for sources or categories of sources that emit greenhouse gas emissions" and to "consult with other governments to facilitate the development of integrated and cost-effective regional, national and international greenhouse gas reduction programs."²⁴ The California regime is fleshed out further through the *Air Resources Board Regulation for the Mandatory Reporting of Greenhouse Gas Emissions*²⁵ and the *Air Resources Board Cap-and-Trade Regulation*.²⁶ Notably, for the present discussion regarding enforcement, the California context is also shaped by SB 1018,²⁷ which, as discussed in Part II below, required the governor to make specific findings (including in relation to enforcement) prior to CARB taking action to approve the linkage.²⁸ In 2017, the California legislature passed AB 398, extending the state's cap-and-trade program to 2030 (there was an initial

horizon of 2020).²⁹ AB 398 also includes measures, such as a price ceiling, to protect against extreme market fluctuations.³⁰

For Quebec's part, in 2009, the province passed Bill 42, *An Act to Amend the Environment Quality Act and Other Legislative Provisions in Relation to Climate*,³¹ which, similar to California, granted the Quebec government powers to enact regulations that create a cap-and-trade system and to enter into an agreement with another government for the harmonization and integration of cap-and-trade systems.³² The regime is structured and implemented through regulations, namely: the *Regulation Respecting Mandatory Reporting of Certain Emissions of Contaminants into the Atmosphere*,³³ and the *Regulation Respecting a Cap-and-Trade System for Greenhouse Gas Emission Allowances*.³⁴ As well, GHG emissions caps in line with Quebec's 2020 GHG emissions reduction goal are set through *Order in Council 1185-2012 Determination of Annual Caps on Greenhouse Gas Emission Units Relating to the Cap-and-Trade System for Greenhouse Gas Emission Allowances for the 2013–2020 Period*.³⁵

Legislative steps toward linking Ontario began in 2009 with the passing of the *Environmental Protection Amendment Act (Greenhouse Gas Emissions Trading)*, 2009.³⁶ That Act provided the government with broad authority to implement a cap-and-trade system and to establish associated rules.³⁷ Similar to the California and Quebec enabling statutes, the Act contemplated integration with other cap-and-trade regimes. This statutory basis was eventually updated with more detail and explicit authorities through the *Climate Change Mitigation and Low Carbon Economy Act (CCMLCEA)*,³⁸ which was passed in February 2016. The regime was further fleshed out by the *Cap-and-Trade Program Regulation*³⁹ and the *Quantification, Reporting and Verification of Greenhouse Gas Emissions*,⁴⁰ both of which took effect on January 1, 2017. Ontario also put in place the *Guideline for the Quantification, Reporting and Verification of Greenhouse Gas Emissions*.⁴¹ As will be discussed in the final part of this chapter, following the June 2018 provincial election, the new Ontario government cancelled the cap-and-trade program, including the revocation of these regulations and repeal of the CCMLCEA.

Enforcement Under the Linkage Agreement

The linkage is premised on an approach of reciprocity and harmonization within a context that acknowledges each jurisdiction's sovereignty in the administration of each respective program.⁴² Such architecture began through

cooperation under the WCI. For example, the WCI *Design Recommendations for the WCI Regional Cap-and-Trade Program*⁴³ recommended that “each WCI Partner jurisdiction will retain and/or enhance its regulatory and enforcement authority and responsibilities to enforce compliance with the cap-and-trade program within its own jurisdiction.”⁴⁴ Similarly, the *Design for the WCI Regional Program* document, which provided a roadmap for WCI partner jurisdictions developing respective implementing regulations, stated that each jurisdiction “will use its authority to enforce compliance with the WCI Cap-and-Trade program within its own jurisdiction.”⁴⁵ It went on to explain that harmonization and compliance verification are essential to ensure consistent outcomes and a level playing field, but acknowledged that “the degree of harmonization is subject to each WCI partner jurisdiction’s legislative and administrative processes and acknowledges that each jurisdiction maintains sovereignty in the administration of its program.”⁴⁶

This approach was explicitly included in the 2014 Quebec-California Linkage Agreement,⁴⁷ and was carried into the updated 2017 Ontario-Quebec-California Linkage Agreement⁴⁸ (the latter included some slightly updated language but did not substantively alter enforcement and withdrawal aspects).

Article 11 sets out the supervision and enforcement regime:

The Parties shall work cooperatively to maintain market integrity, including preventing fraud, abuse and market manipulation and to ensure the reliability of the joint auction and their respective programs. The Parties shall work cooperatively in applying their respective program requirements governing the supervision of all transactions carried out among registered participants of each of the Parties and of any auction or reserve sale.

The Parties shall facilitate, in accordance with the privacy, and other statutes and regulations applicable in each of their jurisdictions and the provisions of article 15 hereunder, the sharing of information to support the effective administration and enforcement of each party’s statutes and regulations.

This exists within the broader context of harmonization required under Article 4:

The Parties shall continue to examine their respective regulations for the reporting of greenhouse gas emissions and for the cap-and-trade program in order to promote continued harmonization and integration of the Parties' programs.

In the case where a difference between certain elements of the Parties' programs is identified, the Parties shall determine if such elements need to be harmonized for the proper functioning and integration of the programs . . .

A Party may consider making changes to its respective programs, including changes or additions to its emissions reporting regulation, cap-and-trade program regulations, and program related operating procedures. To support the objective of harmonization and integration of the programs, any proposed changes or additions to those programs shall be discussed between the Parties . . .⁴⁹

These rules for harmonization and cooperation in enforcement under the linkage are supported by further requirements with respect to robust offset protocols,⁵⁰ compliance instruments,⁵¹ trade,⁵² and accounting mechanisms.⁵³ In practice, compliance and enforcement—and trading—depend on the Compliance Instrument Tracking System Service (CITSS), which is the registry of compliance instruments for the entire cap-and-trade program. It acts as a management and tracking system for accounts and compliance instruments issued through the cap-and-trade linkage, allowing market participants to hold and retire compliance instruments and to trade compliance instruments with other account holders. In short, CITSS is the market hub that facilitates the flow of tradable allowances.

Under this approach of reciprocity and respect for sovereignty, which may be the product of constitutional constraints on cross-border activities of sub-national governments,⁵⁴ the respective state or provincial enforcement regimes of each party are of primary importance. California legislators recognized this in the lead-up to entering into the initial linkage with Quebec. As a safeguard, they passed SB 1018, which required the governor to confirm

that the program to be linked had environmental and enforcement requirements that were “equivalent to or stricter than” the California program, that the state was able to enforce its laws to constitutional limits, and that there would be no “significant liability” imposed on California for any “failure associated with linking to the Quebec program or related participation in WCI, Inc.”⁵⁵ Such a review and confirmation by the governor’s office was indeed completed ahead of California’s linking with Quebec,⁵⁶ and then again prior to Ontario joining.⁵⁷

CALIFORNIA

California’s enforcement regime flows from the statute and regulations referenced above. Specifically, the regulation expressly includes prohibitions on any trading involving a manipulative device, a cornering of or an attempt to corner the market, fraud, attempted fraud, or false or inaccurate reports.⁵⁸ Under the regulations, violations of the regulations can result in civil or criminal penalties,⁵⁹ and perjury statutes apply.⁶⁰ Administratively, the California program includes mechanisms to monitor and prevent market manipulation.⁶¹

Institutionally, it is CARB that leads enforcement. CARB has the authority to issue orders to covered entities and to set and issue penalties for violations. For example, under the cap-and-trade regulations, if a covered entity misses an annual or triennial obligation deadline, then it must submit emission allowances equal to four times the entity’s excess emissions.⁶²

Beyond that, if the entity does not submit allowances of excess emission after thirty days, then CARB may issue a \$25,000 fine per missing allowance per forty-five days.⁶³ Additionally, CARB has the authority to suspend, revoke, or restrict holding accounts for covered entities.⁶⁴

QUEBEC

Quebec’s enforcement regime flows from the statute and regulations referenced above. Several enforcement tools exist, including administrative monetary penalties (AMPs), quasi-criminal offences (and associated penalties), and several other specific measures such as suspension, withdrawal, or cancellation of an emissions allowance. These powers are administered by the Ministère de l’Environnement et de la Lutte contre les changements climatiques (MELCC).

With respect to AMPs and regulatory offences, the *Environment Quality Act* provides a general framework for applying administrative sanctions in connection with penal proceedings. Specific penalties and applicable AMPs are set out in the cap-and-trade regulation, which contains several financial and legal penalties of varying degrees depending on the infraction and severity of transgressions at issue.⁶⁵ The regulation provides for penalties of \$500–\$500,000 and up to eighteen months of imprisonment for an individual, or \$10,000–\$3 million in the case of non-compliance for a corporation.⁶⁶ Additionally, financial penalties double in the case of a second offence.

In some circumstances the minister may suspend, withdraw, or cancel any allowance for certain violations.⁶⁷ The minister may also refuse to register an emitter for an auction or sale if the emitter provides false or misleading information, omits required information, or contravenes a rule of procedure.⁶⁸ In some cases, such as providing false or misleading information, transgressors risk being guilty of an offence as well as being barred from the market.⁶⁹

With respect to meeting emission reduction requirements under the cap, if an emitter does not have sufficient allowances by November 1 of the year following the end of a compliance period (i.e. in 2015, 2018, and 2021), then the entity's account will be suspended along with a requirement to pay a penalty of three emissions allowances for each missing allowance.⁷⁰ If after thirty days the emitter cannot produce required allowances, the minister will subtract the owed allowances from the emitter's next free allowance allocation.⁷¹

ONTARIO

Enforcement under Ontario's regime was primarily set out in the legislation referenced above, though, compared to Quebec and California, Ontario had more specifics at the statute level. Similar to Quebec, enforcement in Ontario featured financial and legal penalties of varying degrees depending on the infraction and severity of transgression at issue. Under the *CCMLCEA*, individuals convicted of an offence could be liable for fines of \$5,000 to \$6 million and imprisonment for up to a year.⁷² Corporations could be liable for fines of \$25,000 to \$10 million.⁷³ Once again, such penalties enforced specific prohibitions in relation to trade such as fraud and market manipulation or providing misleading or untrue information.⁷⁴ These also applied with respect to prohibitions on disclosure⁷⁵ and obstructing administration of the Act.⁷⁶

In terms of non-compliance with emission reductions obligations under the cap, the *CCMLCEA* imposed a penalty similar to Quebec. If a market

participant failed to submit all required allowances by the deadline, the Act required additional emission allowances in an amount equal to three times the shortfall⁷⁷ and provided authority to issue fines and impose other consequences.⁷⁸

Ontario's enforcement regime also included AMPs by way of the *Administrative Penalties Regulation*,⁷⁹ which provides a list of contraventions to which the penalties apply, including failure to follow provisions regarding the trading of emission allowances or credits, coordinating bidding, or perpetuating fraud contrary to the Act; failure to quantify and report the amount of greenhouse gas emitted, or to use the appropriate quantification methodology, contrary to the *Quantification, Reporting and Verification of Greenhouse Gas Regulation*; failure to register as a mandatory participant within the time prescribed under the *Cap-and-Trade Program Regulation*; and failure to provide a reversal report, or the failure of an accredited verification body to provide a verification report, as required pursuant to the *Ontario Offset Credits Regulation*. The AMP regime was underpinned by s 57 of the CCMLCEA, which provided general authority for AMPs to be imposed for the purposes of ensuring compliance with the Act and to prevent any participant from deriving an economic benefit from contravening the Act.⁸⁰

These respective enforcement regimes function in parallel across the entire linkage to ensure that market actors comply with all applicable rules and face significant penalties for failing to do so. Regular compliance reports are made publicly available by CARB and the MELCC.⁸¹

Ontario Withdrawal from the Linkage

As a “first order of business” following the June 2018 provincial election,⁸² the newly elected premier pulled Ontario out of the linkage by revoking the cap-and-trade regulations and suspending all trading on July 3, 2018. Such a withdrawal is explicitly contemplated under the Linkage Agreement. Article 17 states:

A Party may withdraw from this Agreement by giving written notice of intent to withdraw to the other Parties. A Party that intends to withdraw from this Agreement shall endeavour to give 12 months notice of intent to withdraw to the other Parties. A Party that intends to withdraw from this Agreement shall endeavor to match the effective date of withdrawal with the end of a compliance period.

Notably, Article 17 provides some clarity to California and Quebec as the parties remaining in the linkage:

If a Party withdraws, the Agreement shall remain in force for the remaining Parties.

While this process of withdrawal is prescribed in relatively clear terms in the Linkage Agreement, it was not clear in 2018 that Ontario followed the process because the government of Ontario had not published documentation of its “written notice of intent to withdraw” pursuant to Article 17. It is possible that such was provided to California and Quebec; however, no such documentation has surfaced in the public domain. Further, it is abundantly clear that Ontario did not “endeavour to give 12 months notice of intent to withdraw to the other Parties,” nor did it “endeavor to match the effective date of withdrawal with the end of a compliance period.” Rather, the withdrawal was made without formal notice at all, other than statements made by the new premier soon after the provincial election and an apparent refusal by Ontario to participate in the sixteenth joint auction.

The clearest discussion of Ontario’s withdrawal was from California when CARB issued the following update in September 2018:

On July 3, 2018, the Ontario government published a regulation (386/18) revoking Ontario’s cap-and-trade regulation (144/16), and suspended all Ontario entity CITSS accounts. With Ontario’s departure from the linked carbon market, California and Québec are working together to ensure that the environmental integrity and stringency of our cap-and-trade program and market is maintained. Our goals are to make certain that the program continues to reduce emissions of climate-changing gases as a crucial part of our efforts to combat the existential threat of climate change, while also continuing the smooth operation and integrity of our joint carbon market.

Please note that all compliance instruments in accounts registered in California or Québec are valid for compliance purposes and for trading or selling between participants of the two jurisdictions.⁸³

This suggests that California acknowledged Ontario's formal withdrawal under the Linkage Agreement, notwithstanding the seeming lack of formal notice under Article 17. It may well be the case that California's interest in the success of the linkage and efficacy of the Linkage Agreement has resulted in it not wanting to draw attention to the fact that Ontario did not follow the terms of the Agreement.

Meanwhile, Ontario's withdrawal included legal steps beyond the process set out in the Linkage Agreement. On July 3, 2018, the new Ontario government filed Ontario Regulation 386/18 (Regulation), which prohibits participants in the cap-and-trade scheme from purchasing, selling, trading, or otherwise dealing with emission allowances and credits.⁸⁴ On July 25, 2018, the Ontario government introduced *Bill 4: The Cap and Trade Cancellation Act* to formally wind down the Ontario cap-and-trade program. The Act repealed Ontario's cap-and-trade legislation⁸⁵ and provided for the "retiring" or "cancelling" of cap-and-trade instruments (including those created under the Quebec or California systems), the payment of compensation by the government to a select few types of market participants (approximately 250 capped participants total), and the barring of any legal recourse against the government.⁸⁶ The Act does require Ontario to establish GHG reduction targets and to prepare a climate change plan,⁸⁷ which was released in November 2018 as part of "Preserving and Protecting our Environment for Future Generations: A Made-in-Ontario Environment Plan."⁸⁸

In the wake of the relatively sudden and fundamental change in Ontario policy and law, it was unclear what value emission credits would hold. Ontario's move generated more legal questions than answers for market participants.⁸⁹ As summarized by a commentary from the private bar, "businesses holding some \$2.8 billion in allowances have no market to offload their purchases, and it is unclear what legal remedies are available to these parties or whether refunds are forthcoming."⁹⁰ Litigation seemed inevitable. One of the first suits out of the gate was a case brought by Ecojustice on behalf of several environmental groups. It alleged that the Ford government unlawfully failed to provide for public consultation on both the Regulation and on the *Bill 4: Cap and Trade Cancellation Act*, as required by the Ontario *Environmental Bill of Rights (EBR)*.⁹¹ In an October 2019 decision, the Ontario Superior Court agreed, ruling that the new Ontario government contravened the *EBR*.⁹² More recently, at least one market participant has brought suit against WCI Inc., claiming damages flowing from a trading freeze imposed following Ontario's

departure.⁹³ That litigation is ongoing at the time of publication. Overall, it appears market participants have limited legal recourse, particularly given the limits placed on compensation by the *Cap and Trade Cancellation Act*. Meanwhile, the remaining market between Quebec and California continues to function.⁹⁴ The May 2020 auction was heralded as a success,⁹⁵ though in the lead up to that auction, prices dipped below the cap-and-trade program's minimum 2020 price due to the effects of the Covid-19 pandemic.⁹⁶

Conclusion

While this sub-national linkage across the Canada-US border demonstrates that much can be accomplished in the absence of federal leadership, it also reveals fundamental weaknesses. The respective enforcement regimes of California, Quebec and, formerly, Ontario are comprehensive, robust, and, with various tools and penalties available, relatively nuanced. High compliance rates (and, therefore, significant emission reductions) suggest that the respective and harmonized enforcement regimes have been effective at encouraging good market behaviour and deterring delinquency. However, the recent experience with Ontario's withdrawal reveals a fundamental weakness in the system: easy withdrawal with minimal consequences. Notwithstanding the carefully designed and implemented architecture of the linkage in most regards, this readily available low-resistance path to leaving the market undermines overall market integrity and subverts the otherwise strong enforcement regime.

As the design and implementation of multi-jurisdictional carbon markets evolve, parties and regulated entities would be wise to build in stronger withdrawal mechanisms that augment the enforcement regimes by increasing the difficulty of a jurisdiction departing, thus providing more market certainty and reliability for all actors involved. Unfortunately, there may be political barriers to doing so, given that a stronger locking in of a jurisdiction's commitment to link may deter linking in the first place. Additionally, legal barriers such as constitutional dimensions continue to constrain how far states and provinces can go with entering international agreements that contain binding obligations.⁹⁷

Ultimately, the foregoing examination of the linkage's enforcement and withdrawal dimensions demonstrates the limitations of a sub-national led approach. While state-province collaboration has provided important momentum and action leading to GHG emission reductions, thanks in part to

effective enforcement regimes, there is no substitute for federal leadership and coordination in both Canada and the US. This does not mean that linkages between nation-states would not also be susceptible to parties withdrawing, but the ability for nation-states to enter into binding agreements would better safeguard against sudden, disruptive withdrawal, and would also lend itself to strong enforcement regimes. In the meantime, however, carbon markets worldwide will continue to benefit from lessons learned through the ambitious and laudable actions of sub-national actors.

NOTES

- 1 Assistant Professor, Faculty of Law, University of Calgary.
- 2 SC 2018, c 12.
- 3 See Ministère du Développement durable, de l'Environnement et de la Lutte contre les changements climatiques, "Québec-California-Ontario Carbon Market: A Strong Example of North American Collaboration", *Newswire* (28 February 2018), online: <www.newswire.ca/news-releases/quebec-california-ontario-carbon-market-a-strong-example-of-north-american-collaboration-675459933.html>.
- 4 Note that many consider sub-national efforts to be a "second-best" option, believing a comprehensive federal regime—either cap-and-trade or carbon tax—to be preferable. See e.g., Cary Coglianese & Jocelyn D'Ambrosio, "Policymaking Under Pressure: The Perils of Incremental Responses to Climate Change" (2008) 40 Conn L Rev 1413; Valentina Bosetti & David G Victor, "Politics and Economics of Second-Best Regulation of Greenhouse Gases: The Importance of Regulatory Credibility" (2011) 32:1 Energy J 1; Matthew Ranson & Robert Stavins, "Linkage of Greenhouse Gas Emissions Trading Systems: Learning from Experience" (2013) Harvard Kennedy School Faculty Research Working Paper Series ES 13-2; Ann Carlson, "Designing Effective Climate Policy: Cap-and-Trade and Complementary Policies" (2012) 49:2 Harv J on Legis 207. Note also that Canada's federal *Greenhouse Gas Pollution Pricing Act* is premised on a cooperative federalism approach that allows provinces and territories to implement their own regime so long as it satisfies federal minimum requirements. The Quebec and now-abandoned Ontario regimes discussed in the present article are instances of this. See *Reference re Greenhouse Gas Pollution Pricing Act*, 2019 ONCA 554 at 135 [GHGPPA Reference] (explaining that the GGPPA makes room "for the operation of provincial carbon pricing legislation of sufficient stringency"). See also *Reference re Greenhouse Gas Pollution Pricing Act*, 2019 SKCA 40 at 122.
- 5 For example, Council of Atlantic Premiers, "Conference of New England Governors and Eastern Canadian Premiers Highlights Importance of Cross-Border Relationship" (17 May 2021), online: <cap-cpma.ca/conference-of-new-england-governors-and-eastern-canadian-premiers-highlights-importance-of-cross-border-relationship/> (mentions the 2001 climate change commitments).
- 6 See Regional Greenhouse Gas Initiative, "Program Design Archive" (2020), online: <www.rggi.org>. Once RGGI became fully operational, it stopped using observer status as a term or designation. Instead, today any interested person, state, or other

stakeholder is able to attend a meeting or provide comment, without need for a designated status. There are currently no provinces formally participating in RGGI.

- 7 Pacific Coast Collaborative, “Memorandum to Establish the Pacific Coast Collaborative” (30 June 2008), online (pdf): <pacificcoastcollaborative.org/wp-content/uploads/2018/09/Memorandum-PCC_2008.pdf>.
- 8 Pacific Coast Collaborative, “Pacific Coast Action Plan on Climate and Energy” (28 October 2013), online (pdf): <pacificcoastcollaborative.org/wp-content/uploads/2018/09/Pacific-Coast-Climate-Action-Plan.pdf>.
- 9 *Ibid.*
- 10 See Western Climate Initiative, “History” (2013) online: <westernclimateinitiative.org/index.php?option=com_content&view=article&id=29&Itemid=44>.
- 11 Western Climate Initiative, “Design Recommendations for the WCI Regional Cap-and-Trade Program” (23 September 2008), online (pdf): <www.mddelcc.gouv.qc.ca/changements/carbone/documents-WCI/modele-recommande-WCI-en.pdf> [WCI Design Recommendations].
- 12 Western Climate Initiative, “Design for the WCI Regional Program” (27 July 2010), online: <www.westernclimateinitiative.org/the-wci-cap-and-trade-program/program-design> [WCI Regional Program Design].
- 13 See *ibid.*
- 14 *Ibid.*
- 15 *Supra* note 2.
- 16 The Linkage Agreement was updated to include Ontario in September 2017; however, it is now back to a two-party agreement.
- 17 Government of Quebec, Ministry of Sustainable Development, Environment and the Fight against Climate Change, “California Cap-and-Trade Program and Québec Cap-and-Trade System, May 2018 Joint Auction #15: Summary Results Report” (23 May 2018), online (pdf): <www.mddelcc.gouv.qc.ca/changements/carbone/ventes-encheres/2018-05-15/resultats-vente20180515-en.pdf>.
- 18 Government of Quebec, Ministry of Sustainable Development, Environment and the Fight against Climate Change, “California Cap-and-Trade Program and Québec Cap-and-Trade System, August 2018 Joint Auction #16: Summary Results Report” (21 August 2018), online (pdf): <www.mddelcc.gouv.qc.ca/changements/carbone/ventes-encheres/2018-08-14/resultats20180814-en.pdf>.
- 19 Government of Quebec, Ministry of Sustainable Development, Environment and the Fight against Climate Change, “California Cap-and-Trade Program and Québec Cap-and Trade System, Joint Auction of Greenhouse Gas Allowances On May 20, 2020” (20 March 2020), online (pdf): <www.environnement.gouv.qc.ca/changements/carbone/ventes-encheres/2020-03-20/avis-vente-20200320-en.pdf>.
- 20 *Agreement between the California Air Resources Board and the Gouvernement du Québec Concerning the Harmonization and Integration of Cap-and-Trade Programs for Reducing Greenhouse Gas Emissions* (27 September 2013), online (pdf): <www.arb.ca.gov/cc/capandtrade/linkage/ca_quebec_linking_agreement_english.pdf> [Linkage Agreement 2013].
- 21 *Agreement on the Harmonization and Integration of Cap-and-Trade Programs for Reducing Greenhouse Gas Emissions between the Gouvernement du Québec, the Government of California and the Government of Ontario*, (22 September 2017), online: <news.ontario.ca/en/backgrounder/46294/agreement-on-the-harmonization-and-

integration-of-cap-and-trade-programs-for-reducing-greenhouse-gas-emissions> [Linkage Agreement 2017] (All references throughout are to this updated Agreement unless otherwise specified).

22 *Ibid.*

23 *Ibid.*

24 *Global Warming Solutions Act of 2006*, AB 32 (2006) at § 38564.

25 CCR tit 17, §§ 95100-95158 (2015).

26 CCR tit 17, §§ 95800 to 96023 (2013).

27 CGC § 12894(f) (West 2013) [SB 1018].

28 *Ibid.*

29 *California Global Warming Solutions Act of 2006*, as amended 2017-18, AB 398, Reg Sess, Cal, 2017.

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