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c 18 Water Transfer Control Act, 1989

Ontario

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CHAPTER 18

An Act respecting transfers of Water*Assented to March 2nd, 1989*

Whereas water is a precious and limited resource that is vital to the long-term social, environmental and economic well-being of Ontario; and whereas the Province has a responsibility to ensure a secure supply of water for Ontario;

Preamble

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) In this Act,

Definitions

“approval” means the approval of the Minister under subsection 4 (1);

“inspector” means a person who is appointed by the Minister as an inspector under section 9;

“Minister” means the Minister of Natural Resources;

“prescribed” means prescribed by the regulations;

“regulations” means the regulations made under this Act;

“water” means natural surface and ground water in liquid, gaseous or solid state, but does not include spring or mineral water bottled as a beverage for human consumption.

(2) For the purposes of this Act, Ontario is divided into four provincial drainage basins as follows:

Interpretation

1. Lake Ontario, Lake Erie, Lake Huron, Lake Superior and the St. Lawrence River and the part of Ontario the water of which drains into any of them.
2. The Ottawa River and the part of Ontario the water of which drains into it.
3. The part of Ontario the water of which drains into the Nelson River.

4. The part of Ontario the water of which drains into Hudson Bay or James Bay.

Prohibition

2. No person shall transfer water out of a provincial drainage basin by any means without the written approval of the Minister.

Information required

3. A person who requests approval to transfer water out of a provincial drainage basin shall submit to the Minister plans, reports, studies and other information as are prescribed or as may be requested by the Minister.

Approval subject to conditions and payment

4.—(1) The Minister may approve a transfer of water out of a provincial drainage basin subject to such conditions and subject to the payment to the Crown of such amount as the Minister considers appropriate.

Manner and terms of payment

(2) The amount to be paid to the Crown for a transfer of water under subsection (1) may be a lump sum, a fixed periodic payment, an amount calculated according to the quantity of water transferred, or any combination thereof, and may be made payable on such terms as are prescribed or as the Minister determines.

Approval not transferable

5. An approval is not transferable.

Refusal

6.—(1) The Minister shall refuse to give approval to a transfer of water out of a provincial drainage basin if, in the Minister's opinion, the transfer may be detrimental to ensuring a secure water supply for Ontario or any part thereof.

Refusal to transfer outside Canada

(2) Despite the trade agreement signed on the 2nd day of January, 1988 by the Government of Canada and the Government of the United States of America or any law of Canada implementing the agreement, the Minister shall refuse to give approval to a transfer of water out of a provincial drainage basin to a place outside Canada.

Conditions and payments changed, etc.

7. The Minister may at any time,

- (a) waive or revoke a condition attached to an approval;
- (b) change a condition attached to an approval;
- (c) attach a new condition to an approval; or
- (d) change the amount or terms of the payment required to be paid to the Crown for the transfer of water.

8. If at any time after the Minister has given an approval the Minister is of the opinion that the transfer is or may be detrimental to ensuring a secure water supply for Ontario or any part thereof, the Minister shall revoke the approval. Revocation

9.—(1) The Minister may appoint in writing one or more employees of the Ministry or other persons as inspectors. Inspectors

(2) In an appointment under subsection (1), the Minister may limit the duties or the authority, or both, of an inspector in such manner as the Minister considers appropriate. Limitation

10.—(1) An inspector shall determine, Inspectors,
duties

- (a) if section 2 is being or has been contravened;
- (b) if the conditions attached to a consent are being complied with;
- (c) if the amount of money owed to the Crown is or has been paid to the Crown; or
- (d) if an order issued under subsection 14 (5) or 15 (1) is being complied with.

(2) An inspector, for the purpose of carrying out his or her duties, Powers

- (a) may enter any place at any reasonable time;
- (b) may stop any vehicle or vessel at any reasonable time;
- (c) may inspect any place or thing;
- (d) may require that any machine or thing be operated or used;
- (e) may request the production for inspection of any documents or things;
- (f) upon giving a receipt therefor, may remove from a place documents or things produced pursuant to a request under clause (e) for the purpose of making copies or extracts and shall promptly return them to the person who produced them; and
- (g) may record or copy any information by any method.

Entry to dwellings

11.—(1) A person shall not exercise a power of entry conferred by this Act to enter a place that is being used as a dwelling without the consent of the occupier except under the authority of a warrant under this section.

Warrant for search

(2) Where a justice of the peace is satisfied on evidence upon oath that there are in a place documents or things that there is reasonable ground to believe will afford evidence relevant to the carrying out of an inspector's duties under this Act, the justice of the peace may issue a warrant in the prescribed form authorizing the inspector named in the warrant to search the place for any such documents or things and to remove them for the purposes of making copies or extracts and they shall be returned promptly to the place from which they were removed.

Warrant for entry

(3) Where a justice of the peace is satisfied on evidence upon oath that there is reasonable ground to believe it is necessary that a place being used as a dwelling or to which entry has been denied be entered so that an inspector may carry out his or her duties under this Act, the justice of the peace may issue a warrant in the prescribed form authorizing such entry.

Authority given by warrant

(4) A warrant issued under subsection (3) authorizes the inspector to whom it is issued, by force if necessary, and together with such police officers as the inspector calls upon for assistance, to do anything set out in section 10 and specified in the warrant.

Execution of warrant

(5) A warrant issued under this section shall specify the hours and days during which it may be executed.

Expiry of warrant

(6) A warrant issued under this section shall state the date on which it expires, which shall be a date not later than fifteen days after the warrant is issued.

Application without notice

(7) A justice of the peace may receive and consider an application for a warrant under this section without notice to and in the absence of the owner or occupier of the place named in the warrant.

Admissibility of copies

12. Copies of, or extracts from, documents and things removed from a place under this Act and certified as being true copies of the originals by the person who made them are admissible in evidence to the same extent as, and have the same evidentiary value as, the documents or things of which they are copies or extracts.

Obstruction of inspector

13.—(1) No person shall hinder, obstruct or interfere with an inspector in the execution of a warrant or otherwise

impede an inspector in carrying out his or her duties under this Act.

(2) Subsection (1) is not contravened where a person refuses to produce documents or things, or to operate or use machines or things, unless a warrant has been issued under section 11. Idem

(3) No person shall furnish an inspector with false information or neglect or refuse to furnish information required by an inspector for the purpose of carrying out his or her duties under this Act. False information

14.—(1) Every person who contravenes section 2 or 13 is guilty of an offence. Offences

(2) Every person who breaches a condition attached to an approval is guilty of an offence. Breach of condition

(3) Every individual who is convicted of an offence under this section is liable, Penalty for individuals

(a) on a first conviction, to a fine of not more than \$50,000 for each day or part of a day on which the offence occurs or continues; and

(b) on each subsequent conviction, to a fine of not more than \$100,000 for each day or part of a day on which the offence occurs or continues.

(4) Every corporation that is convicted of an offence under this section is liable, Penalty for corporations

(a) on a first conviction, to a fine of not more than \$250,000 for each day or part of a day on which the offence occurs or continues; and

(b) on each subsequent conviction, to a fine of not more than \$500,000 for each day or part of a day on which the offence occurs or continues.

(5) In addition to any penalty imposed under subsection (3) or (4), the court that convicts a person of an offence under this Act, and any court of competent jurisdiction thereafter, may make an order prohibiting the continuation or repetition of the offence by the person convicted. Restraining order upon conviction

15.—(1) Upon the application of counsel for the Attorney General to the Supreme Court or District Court, the court Restraining order

may make an order restraining a person from transferring water out of a provincial drainage basin without an approval.

Idem

(2) An order under subsection (1) is in addition to any penalty that may be imposed and may be made whether or not proceedings have been commenced for a contravention of section 2.

Regulations

16. The Lieutenant Governor in Council may make regulations,

- (a) prescribing forms and providing for their use;
- (b) governing applications for an approval;
- (c) prescribing plans, reports, studies and information to be submitted by applicants;
- (d) prescribing and governing the books, records and accounts that shall be kept by persons transferring water out of a provincial drainage basin;
- (e) prescribing and governing the reports and returns to be made to the Minister;
- (f) prescribing methods of calculating the amount of the payment required to be paid to the Crown for a transfer of water under this Act;
- (g) prescribing the terms of the payment required to be paid to the Crown for a transfer of water under this Act;
- (h) requiring that security be deposited by a person who has obtained an approval and prescribing the form, terms, conditions and amount of such security;
- (i) prescribing, by content, size or type of container, or any other characteristic, what is or is not considered to be spring or mineral water bottled as a beverage for human consumption for the purpose of the definition of water.

Commence-
ment

17. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

18. The short title of this Act is the *Water Transfer Control Act, 1989*.