

1980

c 333 Ontario Energy Corporation Act

Ontario

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Bibliographic Citation

Ontario Energy Corporation Act, RSO 1980, c 333

Repository Citation

Ontario (1980) "c 333 Ontario Energy Corporation Act," *Ontario: Revised Statutes*: Vol. 1980: Iss. 5, Article 38.

Available at: <http://digitalcommons.osgoode.yorku.ca/rso/vol1980/iss5/38>

CHAPTER 333

Ontario Energy Corporation Act

1.—(1) In this Act,

Interpre-
tation

- (a) "Board" means the Board of Directors of the Corporation;
- (b) "Corporation" means the Ontario Energy Corporation;
- (c) "Minister" means the Minister of Energy;
- (d) "security" includes a bond, debenture, note or other evidence of indebtedness, share, unit, unit certificate, a certificate of share or interest in a trust, estate or association and a certificate of interest in an oil, gas or other hydrocarbon lease, claim or royalty certificate and a document constituting evidence of an interest in any royalties or leases or fractional or other interest therein;
- (e) "Treasurer of Ontario" means the Treasurer of Ontario and Minister of Economics.

(2) In this Act, the terms,

Idem

- (a) "affiliate";
- (b) "associate";
- (c) "equity share"; and
- (d) "resident Canadian",

have the same meanings as in the *Business Corporations Act*, 1974, c. 101, s. 1. R.S.O. 1980,
c. 54

2.—(1) Except as herein otherwise provided, the provisions of the *Business Corporations Act* apply to the Corporation. Application
of
R.S.O. 1980,
c. 54

(2) The provisions of sections 3 to 11, 15 and 180 to 245 of the *Business Corporations Act* do not apply to the Corporation and Idem

the Corporation shall not enter into any arrangement, amalgamation, continuation, winding up or dissolution within the meaning of the *Business Corporations Act*.

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c. 54

Corporation has powers of natural person

(3) The Corporation has all the capacity and power of a natural person and no act of the Corporation and no transfer of real or personal property to or by the Corporation and no issue or sale of securities by the Corporation, otherwise lawful, that is done or made is invalid by reason of the fact that the Corporation is without capacity or power to do such act or make or receive such transfer or issue or sell such securities. 1974, c. 101, s. 2.

Corporation continued

3. The Ontario Energy Corporation is continued as a corporation with share capital. 1974, c. 101, s. 3, *revised*.

Board of Directors

4.—(1) There shall be a Board of Directors of the Corporation consisting of five members and the first directors of the Corporation shall be appointed by the Lieutenant Governor in Council to hold office until their successors are elected by the shareholders of the Corporation.

Majority to be resident Canadians

(2) A majority of the members of the Board shall at all times be resident Canadians.

Change in number of directors

(3) The Corporation may by special by-law increase or decrease the number of its directors.

Filing of copy of by-law

(4) The Corporation shall file with the Minister of Consumer and Commercial Relations a certified copy of the by-law within ten days after the by-law has been confirmed by the shareholders of the Corporation.

Compliance with filing requirement

(5) Failure to comply with subsection (4) does not invalidate the by-law. 1974, c. 101, s. 4.

Head office

5. The head office of the Corporation shall be in The Municipality of Metropolitan Toronto. 1974, c. 101, s. 5.

Corporate objects

6. The objects of the Corporation are,

- (a) to invest or otherwise participate in energy projects throughout Canada or elsewhere in order to,
 - (i) enhance the availability of energy in Ontario,
 - (ii) stimulate exploration for and the development of sources of energy,

- (iii) stimulate expansion of the capability to produce energy,
 - (iv) encourage investment in energy projects and the effective use of financial, human and other resources in energy projects, and
 - (v) encourage the development of processes and equipment that will avoid the wasteful use of energy and that will minimize harm to the environment;
- (b) to explore for, produce, manufacture, buy, transport, refine, sell and otherwise acquire, develop and deal in hydrocarbons and other forms of fuel and energy;
- (c) to subscribe for, purchase, take in exchange or in payment or otherwise acquire, hold and own securities of any other person, firm or corporation having objects altogether or in part similar to those of the Corporation or carrying on any business capable of being conducted so as directly or indirectly to benefit the Corporation;
- (d) to carry on any other trade or business that can be carried on advantageously as ancillary to the carrying out of the objects of the Corporation set out in clauses (a), (b) and (c); and
- (e) to guarantee, with or without security, the performance of contracts and the performance of the obligations or undertakings of any person, firm or corporation, including the payment of dividends, interest, principal and premium, if any, of or on any securities, mortgages or liabilities of any such person, firm or corporation. 1974, c. 101, s. 6.

7.—(1) The authorized capital of the Corporation is ^{Authorized} divided into, _{capital}

- (a) 2,000,000 common shares without par value, to be issued for such consideration as the Board may from time to time determine; and
- (b) 20,000,000 special shares without par value which may be issued in one or more series for such con-

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c. 54

sideration as the Board may determine and, subject to the provisions of subsections (3), (4) and (5) and to the filing of the statement and the issuance of the certificate in respect thereof referred to in subsection 29 (2) of the *Business Corporations Act*, the Board may fix before the issuance of a series the number of shares that is to comprise the series and the designation, preferences, rights, conditions, restrictions, limitations or prohibitions attaching to the series.

Voting
rights

(2) At all meetings of shareholders, the holders of the common shares shall be entitled to one vote for each common share held by them.

Idem

(3) The holders of the special shares shall not be entitled to vote at any meetings of the shareholders of the Corporation other than the meetings referred to in subsection 8 (3) but shall be entitled to notice of meetings of shareholders called for the purpose of authorizing the sale of the undertaking of the Corporation or a substantial part thereof.

Ranking
of series
of shares

(4) The special shares of each series shall rank on a parity with the special shares of every other series with respect to payment of dividends and on the repayment of capital in the event of the liquidation, dissolution or winding up of the Corporation whether voluntary or involuntary.

Redemption
of shares

(5) If the special shares of any series are made redeemable or purchasable for cancellation by the Corporation, the price at which such shares may be redeemed or purchased for cancellation shall not exceed the amount of the issued capital of the Corporation with respect to such shares determined in accordance with the provisions of subsection 31 (2) of the *Business Corporations Act* together with a premium of not more than 20 per cent of that amount and any dividends accrued and unpaid on such shares. 1974, c. 101, s. 7.

Amendment
of
authorized
capital

8.—(1) The Corporation may from time to time,

(a) increase its authorized capital;

(b) decrease,

(i) its authorized capital by cancelling shares, whether issued or unissued and whether with par value or without par value, or by reducing the par value of issued or unissued shares, or

- (ii) its issued capital, if it has shares without par value,

and, where it has more capital than it requires, authorize the repayment of capital to the shareholders to the extent that the issued capital is decreased in any way under this clause;

- (c) redivide its authorized capital into shares of lesser or greater par value;
- (d) consolidate or subdivide any of its shares without par value;
- (e) change any of its shares with par value into shares without par value;
- (f) change any of its shares without par value into shares with par value;
- (g) redesignate any class of shares;
- (h) reclassify any shares with or without par value into shares of a different class;
- (i) delete, vary or otherwise alter the preferences, rights, conditions, restrictions, limitations or prohibitions attaching to a class of special shares.

(2) An amendment under subsection (1) shall be authorized by ^{Authoriza-} special resolution _{tion}.

(3) If the amendment is to delete or vary a preference, ^{Idem} right, condition, restriction, limitation or prohibition attaching to a class of special shares or to create special shares ranking in any respect in priority to or on a parity with an existing class of special shares, then, in addition to the confirmation required by subsection (2), the resolution is not effective until it has been confirmed,

- (a) by 100 per cent of the holders of the shares of such class or classes of shares in writing; or
- (b) in writing by at least 95 per cent of the holders of the shares of such class or classes of shares holding at least 95 per cent of the issued shares of

such class or classes and after twenty-one days notice of the resolution and confirmation has been given by sending the notice to each of the holders of shares of such class or classes to his latest address as shown on the records of the Corporation and only if at the expiration of twenty-one days none of the holders of such class or classes has dissented in writing to the Corporation; or

- (c) if the preferences, rights, conditions, restrictions, limitations and prohibitions attaching to the shares of such class or classes so provide, by at least two-thirds of the votes cast at a meeting of the holders of such class or classes of shares duly called for that purpose.

Articles of amendment

(4) For the purpose of bringing into effect an amendment under subsection (1), the Corporation shall deliver to the Minister of Consumer and Commercial Relations within six months after the resolution has become effective, articles of amendment in duplicate, executed under the seal of the Corporation and signed by two officers, or by one director and one officer, of the Corporation and verified by affidavit of one of the officers or directors signing the articles of amendment, setting out,

- (a) the name of the Corporation;
- (b) a certified copy of the resolution;
- (c) that the amendment has been duly authorized as required by subsections (2) and (3); and
- (d) the date or dates of the confirmation of the resolution by the shareholders.

Decrease of capital

(5) Where the articles of amendment are to decrease the authorized or issued capital, the articles of amendment shall be accompanied by evidence that establishes to the satisfaction of the Minister of Consumer and Commercial Relations that the Corporation is not insolvent, and, if required by that Minister, by evidence that establishes to his satisfaction that no creditors object to the amendment.

Pro forma balance sheet

(6) The articles of amendment shall, if required by the Minister of Consumer and Commercial Relations, be accompanied by a *pro forma* balance sheet after giving effect to the proposed change.

Certificate

(7) The Minister of Consumer and Commercial Relations shall, when all prescribed fees have been paid,

- (a) endorse on each duplicate of the articles of amendment the word "Filed" and the day, month and year of the filing thereof;
- (b) file one of the duplicates in his office; and
- (c) issue to the Corporation or its agent a certificate of amendment to which he shall affix the other duplicate.

(8) The amendment becomes effective upon the date set forth in the certificate of amendment and the capitalization of the Corporation is amended accordingly. 1974, c. 101, s. 8. Effect of certificate

9. The Corporation may purchase any of its issued common shares in accordance with the provisions of the *Business Corporations Act*. 1974, c. 101, s. 9. Purchase of common shares
R.S.O. 1980, c. 54

10. The Board may from time to time, Borrowing powers

- (a) borrow money upon the credit of the Corporation;
- (b) issue, sell or pledge bonds, debentures, notes or other similar obligations of the Corporation, whether secured or unsecured;
- (c) charge, mortgage, hypothecate or pledge all or any currently owned or subsequently acquired real or personal, movable or immovable, property of the Corporation including book debts, rights, powers, franchises and undertakings, to secure any bonds, debentures, notes or other similar obligations of the Corporation, whether secured or unsecured, or any money borrowed or other debt or liability, contingent or otherwise, of the Corporation; and
- (d) delegate the powers conferred on it under this section to such directors or officers of the Corporation and to such extent and manner as is set out in the by-laws or in specific resolutions of the Board. 1974, c. 101, s. 10.

11.—(1) The voting rights pertaining to any shares of the Corporation shall not be exercised when the shares are held in contravention of this Act or the by-laws of the Corporation. Voting rights not to be exercised in certain cases

(2) The validity of a transfer of shares of the Corporation that has been recorded in a register of transfers of the Corporation or the validity of an allotment of shares of the Corporation Transfer and allotment of shares held in contravention of Act

Corporation is not affected by the holding of such shares in contravention of this Act or the by-laws of the Corporation.

Voting
of
shares
held in
contraven-
tion of
Act

(3) If the voting rights pertaining to any shares of the Corporation that are held in contravention of this Act or the by-laws of the Corporation are exercised at any meeting of the shareholders of the Corporation, no proceeding at that meeting is void by reason thereof, but any such proceeding, matter or thing is, at any time within one year from the date of commencement of the meeting at which such voting rights were exercised, voidable by a special by-law of the Corporation. 1974, c. 101, s. 11.

Not
Crown
agency
R.S.O. 1980,
c. 106

12. The Corporation is not an agent of Her Majesty nor a Crown agency for the purposes of the *Crown Agency Act*. 1974, c. 101, s. 12.

Interpre-
tation

13.—(1) In this section, "non-resident" means any person other than,

- (a) a resident Canadian;
- (b) a corporation controlled by a resident Canadian or a group of resident Canadians;
- (c) a corporation the majority of the equity shares of which are held by resident Canadians and which is not controlled by one or more non-residents;
- (d) Her Majesty in right of Canada, Ontario or any other province of Canada or an agent or nominee of Her Majesty.

Equity
shares
owned or
controlled
by non-
residents

(2) The total number of equity shares of the Corporation beneficially owned, directly or indirectly, by non-residents or over which non-residents exercise control or direction shall not at any time exceed 10 per cent of the total number of issued and outstanding equity shares of the Corporation.

Limit of
individual
ownership
of equity
shares

(3) The total number of equity shares of the Corporation beneficially owned, directly or indirectly, by any person or over which the person exercises control or direction shall not at any time exceed 5 per cent of the total number of issued and outstanding equity shares of the Corporation.

Idem

(4) Subsection (3) does not apply in respect of any equity shares of the Corporation beneficially owned by Her Majesty in right of Canada, Ontario or any other province of Canada or by an agent or nominee of Her Majesty.

Where
person
deemed
beneficial
owner of
equity
shares

(5) For the purposes of this section, a person shall be deemed to own beneficially any equity shares of the Cor-

poration owned beneficially by any associate or affiliate of such person.

(6) For the purposes of this section, a corporation is controlled by another corporation, individual or trust if it is in fact effectively controlled by such other corporation, individual or trust, directly or indirectly, or through the holding of shares of the corporation or any other corporation, or through the holding of the outstanding debt of a corporation or individual, or by any other means whether of a like or different nature. Controlled corporation

(7) In calculating the total number of equity shares of the Corporation beneficially owned, directly or indirectly, by any person or over which the person exercises control or direction for the purposes of this section, the total number shall be calculated as the total of all such equity shares, but each share that carries the right to more than one vote shall be calculated as the number of shares equalling the total number of votes it carries. Calculation of total number of equity shares

(8) A shareholder of the Corporation shall, upon the request of the Board, file with the Board a statement verified by affidavit that sets out, Statement by shareholder

- (a) the total number of equity shares of the Corporation beneficially owned or deemed to be owned, directly or indirectly, by the shareholder or over which the shareholder exercises control or direction;
- (b) the name of any person other than the shareholder exercising control or direction over equity shares of the Corporation, the number of equity shares over which such control or direction is exercised and whether the person is a non-resident;
- (c) whether the shareholder or any other person in whose right or for whose use or benefit any equity share of the Corporation is held by the shareholder is a non-resident;
- (d) if the shareholder is a corporation or trust, information establishing that the shareholder is not a non-resident; and
- (e) such other matters as the Board considers relevant in the circumstances for the purposes of this section.

(9) Where a shareholder does not file with the Board a statement verified by affidavit that sets out the information Where statement not filed

requested by the Board pursuant to subsection (8) within thirty days from the day the statement was requested by the Board, the equity shares of the Corporation held by the shareholder shall be deemed to be held in contravention of this section until a statement verified by affidavit that sets out the information is filed with the Board.

Transfer
of
shares

(10) Within sixty days after the purchase or other acquisition of a share of the Corporation by any person, the certificate representing the share shall be presented to the Corporation for transfer into the name of the person, his designated nominee, trustee, executor or other personal representative, and shares not so presented for transfer shall be deemed to be held in contravention of this Act. 1974, c. 101, s. 13.

Cancellation
of
shares
held in
contraven-
tion of
Act

14.—(1) Where any equity shares of the Corporation are held in contravention of this Act, the Corporation may, upon such notice to the holder thereof in such manner as may be prescribed by the by-laws, require such equity shares to be disposed of to a person or corporation who may be eligible to hold equity shares of the Corporation, within such period of time, not being less than sixty days nor more than 180 days or such longer period of time as may be approved by special resolution of the Corporation, as may be stipulated in the notice.

Idem

(2) Where the equity shares referred to in a notice given pursuant to subsection (1) have not been disposed of within the stipulated time, the Corporation may, at any time while the equity shares continue to be held in contravention of this Act, decrease its authorized and issued capital by cancelling the equity shares and the decrease is effective upon,

- (a) the deposit by the Corporation of the amount of the capital repayment payable with respect to the equity shares in a special account with a chartered bank or trust company; and
- (b) the giving by the Corporation of notice of cancellation to the holders of the equity shares in such manner as may be prescribed by the by-laws, including notice of the deposit referred to in clause (a),

and thereupon the equity shares are cancelled and the rights of the holder and of any beneficial owners of the equity shares are terminated except for the right of the holder thereof to receive out of the amount so deposited, without interest, the capital repayment payable with respect thereto upon presentation and surrender of the certificates representing

the said equity shares, and any interest payable on the deposit shall be paid to the Corporation.

(3) The Corporation is not bound to see to the application of the amount deposited or to the execution of any trust, whether express, implied or constructive, in respect of any equity shares cancelled under this section and the Corporation is not estopped by any certificates outstanding in respect of any equity shares cancelled. Application of moneys

(4) In determining as at any particular time the capital repayment to be made on equity shares of the Corporation for the purpose of this section, the capital repayment shall be, Repayment of moneys

(a) in the case of a share with a par value, an amount equal to the par value thereof; and

(b) in the case of a share without par value, an amount equal to the per share amount of the issued capital of the Corporation with respect to the class of shares in question determined in accordance with the provisions of subsection 31 (2) of the *Business Corporations Act* as at the day before the day the deposit referred to in clause (2) (a) is made, provided that if the class of shares in question is listed on a stock exchange, the capital repayment shall be an amount equal to the lesser of, R.S.O. 1980, c. 54

(i) the per share amount of the issued capital of the Corporation with respect to the class of shares in question determined in accordance with the provisions of subsection 31 (2) of the *Business Corporations Act* as at the day before the day the deposit referred to in clause (2) (a) is made, and

(ii) the last sale price per share of the class of shares in question on the stock exchanges on which such shares are listed on the last business day before the day the deposit referred to in clause (2) (a) is made.

(5) Where equity shares of the Corporation are cancelled pursuant to this section, the Corporation shall within thirty days of the date on which the cancellation is effected, file with the Minister of Consumer and Commercial Relations, a notice setting out the number of shares of the class cancelled and the date on which the cancellation was effected. Filing of notice

Idem

(6) Failure to comply with subsection (5) does not invalidate the decrease in the authorized and issued capital of the Corporation.

Non-application of s. 8

(7) The provisions of section 8 do not apply to any decrease of the authorized and issued capital of the Corporation pursuant to this section. 1974, c. 101, s. 14.

Liability of directors

15. In determining whether any equity shares are held in contravention of this Act or in making any determination in connection with any other circumstances relevant to the performance of their duties under this Act, the directors of the Corporation may rely upon any statement made in any statement submitted under subsection 13 (8) or rely upon their own knowledge of the circumstances and neither the Corporation nor the directors are liable in any action for anything done or omitted by them in good faith as a result of any conclusions made by them on the basis of any such statements or knowledge. 1974, c. 101, s. 15.

Authorized investments

16. The bonds, debentures, notes and other evidences of indebtedness of the Corporation and the shares of the Corporation are authorized investments for the purposes of the *Pension Benefits Act* and the *Trustee Act* and are authorized investments for,

R.S.O. 1980, cc. 373, 512

(a) the funds of a corporation to which the *Loan and Trust Corporations Act* or the *Insurance Act* applies; and

(b) the moneys received by a trust company registered under the *Loan and Trust Corporations Act* for guaranteed investment or as deposits. 1974, c. 101, s. 16.

R.S.O. 1980, cc. 218, 249

Shares may be acquired by Ontario

17.—(1) The Minister shall from time to time subscribe for, purchase and hold shares of the Corporation on behalf of Her Majesty in right of Ontario and shall hold at all times a majority of the issued shares of each class of equity shares of the Corporation.

Registration and voting of shares purchased by Ontario

(2) Shares of the Corporation purchased on behalf of Her Majesty in right of Ontario shall be registered in the books of the Corporation in the name of Her Majesty in right of Ontario as represented by the Minister and may be voted by the Minister or his duly authorized nominee on behalf of Her Majesty in accordance with such regulations as the Lieutenant Governor in Council may prescribe. 1974, c. 101, s. 17.

Authority to loan money to Corporation

18.—(1) The Treasurer of Ontario, with the approval of the Lieutenant Governor in Council and upon such terms

and conditions as the Lieutenant Governor in Council may prescribe, may make loans to the Corporation and may acquire and hold as evidence thereof bonds, debentures, notes or other evidences of indebtedness of the Corporation.

(2) The moneys required for the purposes of subsection (1) shall be paid out of the Consolidated Revenue Fund. 1974, c. 101, s. 18. Payment of moneys

19. Notwithstanding any other provision of this Act, so long as at least 90 per cent of the issued shares of the Corporation are owned by Her Majesty in right of Ontario, no indebtedness shall be incurred by the Corporation for borrowed money and no securities of the Corporation shall be issued by the Corporation and no securities of the Corporation shall be sold or otherwise disposed of by Her Majesty in right of Ontario except with the approval of the Lieutenant Governor in Council. 1974, c. 101, s. 19. Where approval required to incur debt or issue securities

20. The moneys required for the purposes of section 17 may be paid out of the moneys appropriated therefor by the Legislature. 1974, c. 101, s. 20, *revised*. Moneys

21. The Lieutenant Governor in Council may make regulations respecting any matter that the Lieutenant Governor in Council considers necessary relating to, Regulations

- (a) the voting by the Minister or his duly authorized nominee in respect of shares of the Corporation held by the Minister;
- (b) terms and conditions that shall apply to the making of loans to the Corporation by the Treasurer of Ontario. 1974, c. 101, s. 21.

22.—(1) The Corporation shall, after the close of each fiscal year of the Corporation, deliver to the Minister an annual report upon the affairs of the Corporation approved by the Board and the approval shall be evidenced by the signatures of two directors of the Corporation duly authorized to sign the report. Annual report

(2) The Minister shall submit the report to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session. Idem

(3) In addition to making an annual report under subsection (1), the Corporation shall make to the Minister such other report on its affairs as the Minister from time to time may require. 1974, c. 101, s. 22. Additional reports

