

Publisher's Note

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CANADA ENERGY LAW SERVICE (Federal) Hunt and Lucas Release No. 2, December 2023
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Publisher's Special Release Note 2023

The pages in this work were reissued in December 2023 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the December 2023 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.

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This release features updates to the commentary throughout the service.

Oil and Gas — Markets, Need and Economic Feasibility — Toll Treatment — Under the former *National Energy Board Act* (NEB Act), the regulator’s authority over traffic, tolls and tariffs was set out in a different part of the Act from the part relating to facility applications for the construction and operation of pipelines. Part IV of the NEB Act set out the former National Energy Board’s authority over traffic, tolls and tariffs, and Part III of that Act contained the Board’s powers in relation to facility applications. Part III of the CER Act now sets out the powers of the CER in relation to both traffic, tolls and tariff proceedings as well for proceedings for the construction and operation of pipelines.

Environmental Impacts — The Onshore Pipeline Regulations — *General* — *The Canadian Energy Regulator Onshore Pipeline Regulations* (OPR) empower the Regulator to impose environmental requirements as a condition of pipeline construction. Information guidelines for applicants relating to these requirements have been incorporated in the CER’s Filing Manual. Under s. 48 of the regulations, the company is required to “develop, implement and maintain an environmental protection program that anticipates, prevents, manages and mitigates conditions that could adversely affect the environment”. The company is also required to include training on “responsible environmental practices and procedures for the day-to-day operations of the pipeline” in its employee training programs. There are also requirements regarding incidents such as reporting an “incident”, which is defined in s. 1(b) of the OPR to include an occurrence that results in “a significant adverse effect on the environment”.

Practice and Procedure — Appeal, CER Review, and Judicial Review — Appeal — *General* — Pursuant to section 71 of the CER Act, an appeal from a decision or order of a designated officer or an inspection officer of the CER may be brought before the Commission of the CER and the Commission may dismiss or allow the appeal and vary or rescind the decision or order. For decisions or orders of the Commission, an appeal may be brought to the Federal Court of Appeal on questions of law or jurisdiction only. Leave to appeal must be applied for within 30 days of the decision or order. The time may be extended by a judge of the Court in “exceptional circumstances”. Appeals must be brought within 60 days after the day on which leave to appeal is granted. Section 72(4) of the CER Act entitles the CER to be heard on an application for leave to appeal and at any stage of an appeal, however, costs may not be awarded against any of the commissioners.