

# ONTARIO'S ELECTRICITY EXPORT TAX – Premier Ford Announces Export Tax, But Will It Be Legal?



On March 4, 2025, Ontario's Premier Doug Ford [announced](#) further a retaliatory measure to the recently announced Trump tariffs, indicating that Ontario would apply a tax on exports of electricity to the United States ("US"). While that announcement might make many Ontarians (and Canadians) feel good about "taking a stance", one wonders whether Ontario has the legal powers to do what it says it is going to do.

## Canada's Constitutional Powers to Tax

The potential problem with Premier Ford's announcement lies in the sections 91 and 92 of *the Constitution Act, 1867* (the "Constitution"). Quite apart from providing us with our current "charter rights" – probably what the Constitution is most well known for these days – the Constitution back in 1867 also established the powers of the federal and provincial governments to, among other things, levy things like taxes.

The possible problem for Premier Ford is that, provincially, [section 92](#) of the Constitution only permits provinces to impose "Direct Taxation within the Province" for provincial purposes. Unfortunately, an "export tax" is not

considered direct taxation within the province; rather it is an indirect tax applying to goods as they leave the province, which technically falls under federal jurisdiction (see *Canadian Industrial Gas & Oil Ltd. v. Government of Saskatchewan et al.*, [1977 CanLII 210 \(SCC\)](#); *Murphy v. C.P.R.*, [1958 CanLII 1 \(SCC\)](#)).

In the first of those cases, back in 1977 Saskatchewan tried to impose a tax on oil produced for export from the province, only to have the Supreme Court of Canada strike it down on the basis that the tax constituted an indirect tax outside their constitutional authority – essentially our concern here.

### **Further Constitutional Amendments**

In 1982, a Constitutional amendment provided the provinces with greater taxation powers over energy production under [section 92A](#), including production “exported in whole or in part from the province[s]”. However, the section also contained an explicit prohibition on differential rates of taxation “between production exported to another part of Canada and production not exported from the province[s]” – which seems to again prohibit what Premier Ford is trying to do.

### **Federal Authority for Export Taxes**

Conversely, [section 91](#) of the Constitution confers a federal authority to make laws, grants the federal government exclusive authority over “The Raising of Money by Any Mode or System of Taxation”, thus making Ottawa the power-broker when it comes to “export taxes”. This seems to suggest that if Premier Ford wants an export tax on electricity, Ontario will have to work hand-in-hand with Ottawa to enact that, as only Ottawa has the legislative authority to do so.

**Ontario has announced export taxes on electricity, but its constitutional powers to do so are suspect.**

**With all of this confusion, retaining qualified trade lawyers to help navigate Canada's new trade environment is a must.**

## **Takeaways**

Premier Doug Ford's announcement of export taxes on Canadian electricity sounds interesting but may be legally suspect.

Constitutionally, Ontario is empowered to uniformly regulate electricity, including pricing and transmission, but cannot impose standalone export taxes, whether internationally or interprovincially, which falls under federal jurisdiction.

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*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*

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