

CONSTRUCTION LAW CHANGES IN ONTARIO

As of August 27, 2018

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Provincial Government Bills *1st Session, 42nd Parliament*

Bill 2, Urgent Priorities Act, 2018

(Minister of Energy, Northern Development and Mines)

This Bill is essentially three separate pieces of legislation in which the only subject matter in common is that each item is deemed by the current government to be priority legislation. Each of the three 'bills' within Bill 2 are described in more detail below.

SCHEDULE 1 - Hydro One Accountability Act, 2018

This Act, if passed, would make the President and every other officer and director of Hydro One Limited subject to a compensation framework to be established by the Government of Ontario and the other five largest shareholders of Hydro One Limited. The compensation policy must also include severance and other entitlements or restrictions, and will not be effective unless and until approved by the Management Board of Cabinet. The Act would also prohibit, on a retroactive basis, any cause of action against the Crown, any current or former member of the Executive Council or employee or agent of or adviser to the Crown, against Hydro One Limited or any of its subsidiaries or officers, directors, employees or agents as a direct or indirect of the enactment of this legislation.

SCHEDULE 2 -White Pines Wind Project Termination Act, 2018

This Act, if passed, would not only immediately cancel the current White Pines Wind Project by revoking all renewable energy approvals associated with the project and any other approval, permit or instrument for the project, it would terminate all contracts and agreements between the project and the IESO. The new Act would also extinguish all causes of action by the project proponent for damages for the termination of the contract that exceed the compensation formula established by the Act. The prescribed damages do not appear to cover any anticipated profit margin and it is not clear to what extent any overhead or administration costs would be recoverable.

SCHEDULE 3 - Back to Class Act (York University), 2018

This Act, if passed, would immediately terminate any and all lockouts by York University and/or strikes by CUPE Local 3903. The Act would require the parties to jointly appoint a mediator/arbitrator for the negotiation or imposition of a new collective agreement. If the parties fail to agree to a mediator/arbitrator by a prescribed date, the Minister will appoint a person to fulfill that role. Until a new collective agreement can be negotiated by the

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parties, the terms and conditions of the prior agreements, including compensation rates, will govern.

- Royal Assent July 25, 2018

Bill 4, Cap and Trade Cancellations Act, 2018

(Minister of the Environment, Conservation and Parks)

This Bill repeals the Climate Change Mitigation and Low-carbon Economy Act, 2016 which established a carbon pricing and trade system for Ontario businesses to trade with each other but also with businesses in the Province of Quebec and the US State of California. The 2016 Ontario statute also provided financial rebates or grants for low carbon emission vehicles and for environmental improvements to homes, schools and businesses. Under the new proposed statute, the Minister is required to prepare a climate change plan, including greenhouse gas emission targets, and to prepare progress reports for climate change plan targets. The proposed statute does not include a deadline or target date climate change plan. The new Act also prohibits any civil damages claims for cancellation of the cap and trade system or any other consequence arising from the repeal of the 2016 statute.

- First Reading carried on division, July 25, 2018
- Second Reading debated July 31, August 1, 2, 7 and 8, 2018

Bill 5, Better Local Government Act, 2018

(Minister of Municipal Affairs and Housing)

This Bill is the mechanism by which the controversial announcement by Premier Ford on Friday July 27, 2018 would alter the number of City of Toronto aldermen to be elected in the October 2018 election and implement certain other changes in other regions associated with the appointment/election of chair persons for specific Regional Municipal Governments. The Bill would amend the City of Toronto Act, 2006, the Municipal Act, 2001 and the Municipal Elections Act, 1996 effective the day that this Bill receives Royal Assent.

- First Reading carried on division, July 30, 2018
- Second Reading debated August 2, 7, 8 **and 14, 2018**
- ***The Bill was not referred to any legislative standing committee for detailed review***
- ***Third Reading carried August 14, 2018***
- ***Royal Assent received August 14, 2018.***

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Private Members' Bills 1st Session, 42nd Parliament

No Private Member Bills of any unique interest to OGCA members have been introduced as of **August 27, 2018**

Pending Proclamations of Bills Not-for-Profit Corporations Act, 2010

Royal Assent October 25, 2010. As of **August 26, 2018** most of the Act has not yet been proclaimed in force.

Regulations

(reflects contents of the Ontario Gazette through to **August 25, 2018**)

Ontario Regulation 349/17

WORKPLACE SAFETY AND INSURANCE ACT, 1997

This regulation was published in the September 16, 2017 edition of the Ontario Gazette. It amends O.Reg. 175/98 to postpone the revocation of certain existing non-construction industry exemptions of certain classes of workers by one year from January 1, 2019 to January 1, 2020.

Ontario Regulation 117/18

FAIRNESS IN PROCUREMENT ACT, 2018

This regulation was published in the April 14, 2018 edition of the Ontario Gazette. It designates suppliers of certain construction services and supplies from the state of New York as being subject to reciprocal restrictions to provide services to government agencies in the Province of Ontario, a response to restrictive legislation passed by the State of New York which prohibits certain construction services and materials originating outside of the US. The regulation will come into force upon the date that the Fairness in Procurement Act, 2018 is proclaimed into force.

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Ontario Regulation 304/18

CONSTRUCTION LIEN ACT

This regulation was published in the May 12, 2018 edition of the Ontario Gazette. It is a general regulation dealing with a wide variety of critical issues such as the definition of a construction trade newspaper, value thresholds for bonds, holdbacks as well as notices of contract termination and expiry of liens. The regulation will come into force on the day when subsection 11(1) of the Construction Lien Amendment Act, 2017 comes into force, which is currently set at of October 1, 2019.

Ontario Regulation 306/18

CONSTRUCTION LIEN ACT

This regulation was published in the May 12, 2018 edition of the Ontario Gazette. This regulation sets out qualifications and procedures for adjudication of construction lien related disputes. This regulation comes into force on the day when subsection 62(2) of the Construction Lien Amendment Act, 2017 comes into force, currently set at of October 1, 2019.

Ontario Regulation 386/18

CLIMATE CHANGE MITIGATION AND LOW-CARBON ECONOMY ACT, 2016

This regulation was published in the July 21, 2018 edition of the Ontario Gazette. This regulation prohibits the purchase, sale or any other dealings with emissions allowances and credits. The regulation is an interim measure as the cancellation of the cap and trade system requires legislation (Bill 5). This regulation came into force on the day when it was filed, July 3, 2018.

Ontario Regulation 388/18 -Building Code

BUILDING CODE ACT, 1992

This regulation was published in the August 4, 2018 edition of the Ontario Gazette. This regulation amends the Ontario Building Code to require certain flood prevention measures and modelling studies for new construction within defined parts of the Toronto Port Lands. It came into effect on July 20, 2018.

Ontario Regulation 389/18 - Quantification, Reporting and Verification of Greenhouse Gas Emissions

CLIMATE CHANGE MITIGATION AND LOW-CARBON ECONOMY ACT, 2016

This regulation was published in the August 11, 2018 edition of the Ontario Gazette. This regulation, in anticipation of the repeal of the Climate Change Mitigation and Low-Carbon Economy Act, 2016 repeals Ontario Regulation 143/16 effective as of August 1, 2018. The essence of the former Ontario Regulation 143/16 is carried forward under a new regulation, Ontario Regulation 390/18, passed under the Environmental Protection Act.

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**Ontario Regulation 390/18 - Greenhouse Gas Emissions: Quantification,
Reporting and Verification**

ENVIRONMENTAL PROTECTION ACT

This regulation was published in the August 11, 2018 edition of the Ontario Gazette. This regulation, in anticipation of the repeal of the Climate Change Mitigation and Low-Carbon Economy Act, 2016 retains the essence of former Ontario Regulation 143/16 effective as of August 1, 2018 through a new regulation under the Environmental Protection Act. The essence of the former Ontario Regulation 143/16 is carried forward under a new regulation, Ontario Regulation 390/18, passed under the Environmental Protection Act.