

CONSTRUCTION LAW CHANGES IN ONTARIO

As of September 28, 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. Two of the three 'bills' within Bill 2 are described in more detail below.

SCHEDULE 1 - Hydro One Accountability Act, 2018

This Act makes 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 also prohibits, 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 immediately cancelled the 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 also terminated all contracts and agreements between the project and the IESO. The new Act also extinguished 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

- Royal Assent July 25, 2018

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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, **September 12 and 13, 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.

- Royal Assent received August 14, 2018
- Portions of the Act declared void by Ontario Superior Court of Justice on September 10, 2018, **however Superior Court of Justice Order was stayed (suspended) by decision of Court of Appeal on September 19, 2018.**

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Bill 31, Efficient Local Government Act, 2018

(Minister of Municipal Affairs and Housing)

This Bill is essentially identical to Bill 5, the Better Local Government Act, 2018 with the additional clause to overcome the Superior Court of Justice Ruling on September 10, 2018 that the Act as it affects the City of Toronto violates the Canadian Charter of Rights and Freedoms and is therefore null and void. The additional clause reads: “456.1 (1) Pursuant to subsection 33 (1) of the Canadian Charter of Rights and Freedoms, the amendments to this Act made by Schedule 1 to the Efficient Local Government Act, 2018 are declared to operate notwithstanding sections 2 and 7 to 15 of the Canadian Charter of Rights and Freedoms.”

- First Reading carried on division September 12, 2018
- **Second Reading debated September 17, 2018.**

Bill 34, Green Energy Repeal Act, 2018

(Minister of the Energy, Northern Development and Mines)

This Bill repeals the Green Energy Act, 2009 and transfers some of its provisions into the Electricity Act, 1998. The transferred provisions deal with the sale and approval of energy efficient home appliances. 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 September 20, 2018**

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Private Members' Bills
1st Session, 42nd Parliament

Bill 33, Rea and Walter Act (Truss and Lightweight Construction Identification), 2018

(Pettapiece, Randy, PC, Perth -- Wellington)

This Bill is identical to Bill 105 introduced on March 9, 2017 and progressed through to Second Reading and which was reintroduced on March 27, 2018. If passed, this Bill would amend the Building Code Act, 1992 regarding the identification of truss (wooden) and lightweight construction in specified buildings that are under construction or to be constructed. A new section 15.8.1 will require a truss identification emblem to be affixed to a building in prescribed size and location.

- First reading September 19, 2018

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

Royal Assent October 25, 2010. As of ***September 27, 2018*** most of the Act has not yet been proclaimed in force.

Regulations

(reflects contents of the Ontario Gazette through to ***September 22, 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

Changes since the September 15, 2018 report are in ***blue bold italic text with yellow highlighting***

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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.

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 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.

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.