

THE CHANGING WORKPLACES REVIEW & THE ONTARIO COLLEGE OF TRADES

LOOKING FORWARD TO 2017

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As 2016 draws to a close, it is important for construction employers to appreciate how pending changes to Ontario's employment and labour laws may impact operations. Specifically, we want to draw your attention to The Changing Workplaces Review, and Bill 70, *Building Ontario Up for Everyone Act (Budget Measures), 2016* ("Bill 70").

THE CHANGING WORKPLACES REVIEW

In February of 2015, the Government of Ontario announced it would undertake "The Changing Workplaces Review" to examine issues and trends affecting workers and employers in the modern workplace, and determine how to "better protect workers while supporting business in our changing economy." Two Special Advisors were appointed to review the *Employment Standards Act, 2000* ("ESA") and the *Labour Relations Act, 1995* ("LRA").

On July 27, 2016, the Special Advisors released an Interim Report identifying **approximately 50 issues and more than 225 options** to amend the *ESA* and *LRA*.

Some of the proposed *ESA* amendments include:

- Repealing key overtime exemptions and special rules to increase the number of employees eligible for overtime pay (e.g., removing the managerial and supervisory exemption to overtime pay).
- Expanding the scope of the term "employee" to extend *ESA* benefits and protections to independent contractors and temporary help agency workers.
- Mandating a timeline within which an employer must post an employee's schedule (e.g., an employee's schedule must be posted two weeks in advance).

Some of the proposed *LRA* amendments include:

- Banning replacement workers in the event of a strike or lock-out.
- Expanding the definition of an "employer" to extend collective bargaining and labour related liability to a wider scope of entities (e.g., making a general contractor responsible for the employees of its sub-contractors).
- Requiring an employer to provide to a union that has obtained signed union cards from a certain percentage of eligible employees (e.g., 20%) with an employee list and employee contract information, in advance of the filing of an application for certification.

The Changing Workplaces Review does not propose direct amendment to the construction industry provisions of the *LRA*. However, many of the proposed changes to the *LRA* and *ESA*, if implemented, would significantly impact construction employers.

Initially, the Special Advisors were expected to release their Final Report on or before December 31, 2016. However, it looks as though the release date may be delayed until early in the new year. Regardless, we expect the Government of Ontario will act swiftly on the recommendations, which could be implemented as early as the Legislature's sitting in Spring 2017.

ONTARIO COLLEGE OF TRADES – BILL 70

The Ontario College of Trades (the "College") is a provincial body which regulates, promotes and modernizes skilled trades in Ontario. The College has approximately 327,000 active members across 156 trades in four sectors: construction, industrial, motive power, and service.

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On November 16, 2016, the Government of Ontario introduced Bill 70 which proposes amendments to several pieces of provincial legislation including the *Ontario College of Trades and Apprenticeship Act, 2009* (“OCTAA”). Bill 70 also proposes a change to the mandate and structure of the College itself.

The proposed changes which impact construction employers fall into four broad categories:

1. *Scope of Practice*: The Board of Governors of the College (the “Board”) must develop a policy for the review of current Scopes of Practice (“SoPs”) for each trade, and a policy for the establishment of SoPs for new trades.
2. *Trade Classification*: The current Appointments Council will be replaced by an Appointments Council and a Classification Roster. The Classification Roster will determine a trade, or part thereof, is voluntary or compulsory.
3. *Administrative Penalties and Appeals to the OLRB*: A fine for an offence under the OCTAA will be classified as an “administrative penalty” and appeals will proceed before the Ontario Labour Relations Board (the “OLRB”) which will have the power to: settle the matter; rescind the penalty; find the OCTAA to have been breached but not order a penalty; lower the penalty; or affirm it. The decision of the OLRB will be final and binding. However, a party may seek judicial review of the decision on the grounds the decision is unreasonable.
4. *Enforcement*: With a renewed focus on “risk of harm”, the College must develop a compliance and enforcement policy to: 1. Specifically describe what constitutes a “risk of harm” and how such risk will be addressed for the purposes of enforcement; and 2. Establish an “annual identification of risks that will be the enforcement focus for a compulsory trade for the year.”

Bill 70 is welcome news to stakeholders who have been advocating and waiting for meaningful change to the College and its processes. Unfortunately, given the amount of legislative and regulatory drafting still to come, it could be well into 2017 or even 2018 until some of the proposed amendments take effect.

The Interim Report (300 pages) and Sherrard Kuzz’s Executive Summary (30 pages) can be found on the Sherrard Kuzz LLP website at www.sherrardkuzz.com.

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