CUPE·SCFP | Canadian Union of Public Employees
Syndicat canadien de la fonction publique

ONTARIO REGIONAL OFFICE
80 Commerce Valley Drive East, Markham, ON L3T 0B2
Tel.: (905) 739-3999 Fax: (905) 739-4001 / cupe.ca / scfp.ca

MEMORANDUM

To: **Joe Matasic, Regional Director - Ontario**

CC: **Gavin Leeb, Director – Legal Branch, All Ontario Legal & Legislative Representatives**

From: **Devon Paul, Legal & Legislative Representative**

Date: **July 24th, 2020**

Re: **Bill 197 – the *COVID-19 Economic Recovery Act, 2020***

Dear Brother Matasic,

As you requested in our telephone call on July 16, 2020, this memorandum provides you with a summary of Bill 197, the *COVID-19 Economic Recovery Act, 2020*, including noting where the legislation may have an impact on CUPE or CUPE members. Bill 197 received Royal Assent on July 21, 2020.

Bill 197 is an omnibus bill containing twenty schedules. Please find the summaries of each schedule below, prepared collectively by the members of the Legal Branch.

Schedule 1: Building Code Act

The amendments to the *Building Code Act* transfer certain powers under the *Act* from the Lieutenant Governor in Council to the Minister of Municipal Affairs and Housing. Most of these changes involve the power to make regulations under the *Act*. The Schedule comes into force on the day that the *COVID-19 Economic Recovery Act, 2020* receives Royal Assent. It is unlikely to directly impact CUPE or its members.

Section 7(1) of the Building Code Act is amended by replacing "Lieutenant Governor in Council" with "Minister". The Minister of Municipal Affairs and Housing is now empowered to:

> make regulations, applicable to the matters for which and in the area in which the municipality, upper-tier municipality, board of health, planning board, conservation authority or the Province of Ontario, respectively, has jurisdiction for the enforcement of this Act

Section 34 is amended to empower the Minister to make regulations "governing standards for the construction and demolition of buildings" and generally. Section 34 includes 40 paragraphs of specific instances where the Minister may now make regulations.

Section 34(9) is repealed and removes the power of the Lieutenant Governor in Council to adopt by reference and require compliance of any "code, formula, standard, guideline, protocol or procedure".

The Minister is now empowered to make regulations adopting by reference and requiring compliance of the following documents, in whole or in part:

- The National Building Code of Canada 2015, the National Plumbing Code of Canada 2015, the National Energy Code of Canada for Buildings 2017, the National Farm Building Code of Canada 1995 or any subsequent versions of those codes.
- A code, formula, standard, guideline, protocol or procedure that requires any part of the construction of a building to be designed by an architect or a professional engineer or a combination of both.
- Any other code, formula, standard, guideline, protocol or procedure.

Schedule 2: City of Toronto Act

The amendments to the *City of Toronto Act* provide for electronic voting, meetings, and expands the role of proxy voting. The Schedule comes into force on the day that the *COVID-19 Economic Recovery Act, 2020* receives Royal Assent. It is unlikely to directly impact CUPE or its members.

Section 189(4) is amended to allow a member of city council, of a local board or of a committee of either them, to participate in a meeting electronically "to the extent and in the manner set out in the by-law". The *Act* previously provided the ability to electronically attend meetings which are open to the public, but not to closed meetings. Electronic attendees may now be counted towards quorum.

Section 189(4.3) is amended so that special meetings may be held to amend an application procedure bylaw. Previously, the ability to hold a special meeting was tied to the declaration of an emergency under the *Emergency Management and Civil Protection Act*.

Section 194.1(1) is added and allows a member of city council to appoint another member of city council as a proxy to act in their place when they are absent. The following rules are applicable to proxy votes:

1. A member shall not act as a proxy for more than one member of city council at any one time.
2. The member appointing the proxy shall notify the clerk of the appointment in accordance with the process established by the clerk.
3. For the purpose of determining whether or not a quorum of members is present at any point in time, a proxyholder shall be counted as one member and shall not be counted as both the appointing member and the proxyholder.
4. A proxy shall be revoked if the appointing member or the proxyholder requests that the proxy be revoked and complies with the proxy revocation process established by the clerk.
5. Where a recorded vote is requested under subsection 194 (4), the clerk shall record the name of each proxyholder, the name of the member of city council for whom the proxyholder is voting and the vote cast on behalf of that member.
6. A member who appoints a proxy for a meeting shall be considered absent from the meeting for the purposes of determining whether the office of the member is vacant under clause 204 (1) (c).

Schedule 3: Development Charges Act

The amendments to the *Development Charges Act* expand the ability of a municipality to impose development charges. The portions of the Schedule summarized below come into force on a day to be named by proclamation of the Lieutenant Governor. These amendments may impact sectors where CUPE is bargaining agent for certain employees.

The list of services for which qualify for development charges to pay for increased capital costs is increased from 12 to 21. The added services include:

- Services provided by a board within the meaning of the *Public Libraries Act*.
- Services related to long-term care.
- Parks and recreation services, but not the acquisition of land for parks.
- Services related to public health.

- Childcare and early years programs and services within the meaning of Part VI of the *Child Care and Early Years Act, 2014* and any related services.
- Housing services.
- Services related to proceedings under the *Provincial Offences Act*, including by-law enforcement services and municipally administered court services.
- Services related to emergency preparedness.
- Services related to airports, but only in the Regional Municipality of Waterloo.

CUPE represents members in several of the sectors noted above. Municipalities may apply development charges related to increased capital costs because of an increased need in these services arising from development. This presents an opportunity to lobby governments to utilize development charges to expand funding to sectors where CUPE has high levels of penetration.

Schedule 4: Drainage Act

The amendments to the *Act* amend the process for drainage by the means of drainage works. The Schedule comes into force on a day to be named by proclamation of the Lieutenant Governor. It is unlikely to directly impact CUPE or its members.

Section 5(1)(b) is amended to remove the requirement that the following parties be notified when a petition to for drainage by the means of drainage works is filed:

- Each petitioner
- Clerk of the local municipality that may be affected
- Conservation authority that has jurisdiction over the lands or if no authority exists, the Minister of National Resources

The amended *Act* requires that notice of petition and its decision be sent to the "prescribed persons". For the purposes of the Act, "prescribed" is defined as "prescribed by the regulations". The regulations do not define prescribed persons for the purposes of 5(1)(b).

Section 41(1) is amended so that an initiating municipality who intends to proceed with drainage works need only send a copy of the engineer's report to persons prescribed by regulations. The Act previously required that the engineer's report be sent to:

- the owners, in the initiating municipality, as shown by the last revised assessment roll to be the owners of lands and roads assessed for the drainage works or for which compensation or other allowances have been provided in the report;

- the clerk of every other local municipality in which any land or road that is assessed for the drainage works or for which compensation or other allowances have been provided in the report is situate;
- the secretary-treasurer of each conservation authority that has jurisdiction over any land affected by the report;
- any railway company, public utility or road authority affected by the report, other than by way of assessment;
- the Minister of Natural Resources where land under his or her jurisdiction may be affected by the report; and
- the Director. R.S.O. 1990, c. D.17, s. 41 (1); 2010, c. 16, Sched. 1, s. 2 (9).

Section 84 outlines the process when a request to abandon drainage works has been filed. Section 84.1(2) is added and empowers the Minister to set out the process by which an engineer's report may be amended and approved.

Section 125 is amended and allows the Minister to make regulations which:

> adopt by reference, in whole or in part, with the changes that the Minister considers necessary, any guideline, protocol or procedure, including a guideline, protocol or procedure established by the Minister, and may require compliance with any guideline, protocol or procedure so adopted.

Schedule 5: Education Act

All amendments in Schedule 5 are to the *Education Act*, RSO 1990, c E.2 (the "*EA*") and associated Regulations.

The following changes are contained in Bill 197:

- Directors of Education are no longer statutorily required to be teachers, and the government is empowered to make regulations establishing qualification requirements for those holding such positions, as well as prescribing their powers and duties;
- The Minister of Education is empowered to direct that demonstration schools for exceptional pupils (of which there are currently eight across the province) be operated either in a residential or non-residential setting for the 2020-2021 school year as a COVID-19 control measure;
- The criteria for who may give permission for a student to attend a prescribed school operated or authorized by a band, band council, or the federal government are expanded;

- The government is empowered to make regulations specifying that children in certain grades of elementary school may not be suspended.

Implications for CUPE

It is not evident that any of these measures directly affect the negotiated rights and benefits enjoyed by CUPE members in the Education Sector.
However, these items are notable as background matters of policy.

Of particular note is the move away from requiring Directors of Education to be qualified as teachers. The Ontario NDP has taken the position that this constitutes a move on the part of the government to move away from leadership by education professionals and towards a corporatized model where school boards will be led by fiscal managers.

Schedule 6: *Environmental Assessment Act*

Introduction

Schedule 6 of Bill 197 amends the *Environmental Assessment Act,* RSO 1990, c E.18 (the *Act*), which provides the process by which the Ontario Ministry of the Environment, Conservation and Parks evaluates the environmental impact of development and building projects. This includes projects proposed by the province, a municipality, or other public body (such as building roads, hydro stations and landfill sites), as well as some major commercial undertakings (such as waste-related projects).

While the amendments to the *Act* are substantial, there is no clear immediate impact on CUPE members.

i. Changing the way projects are identified as falling under the Act:

The *Act* currently defines the kinds of "undertakings" (both public and private) that require environmental assessment, leading to numerous case-by-case exemptions by regulation or by order. The new *Act*, as amended by Bill 197, removes reference to "undertakings" and instead allows the Lieutenant Governor in Council to make regulations designating which projects the *Act* applies to. These projects will be classified as Part II.3 or Part II.4 projects (see below).

ii. Changes to the two kinds of assessment:

The *Act* currently allows for two kinds of assessment: the more onerous individual "Environmental Assessments" (governed by Part II), and the stream-lined class-based Class Environmental Assessments (governed by Part II.1). An undertaking meeting the criteria of an

approved class assessment can be assessed and approved more quickly, by way of an approved class environmental assessment. Under the current legislation, the proponent of a project can apply, pursuant to sections 13-15, for a new class environmental assessment to be recognized.

Bill 197, Sched 6, section 21 removes the ability to apply for a new class to be recognized. Instead, the LG in Council will make regulations designating kinds of projects as falling under Part II.3 (which will be the new full "Environmental Assessment" process) or Part II.4 (the new streamlined "Class Environmental Assessment" process). A list of Class Environmental Assessments already approved under various order (between 1995 and 2016) is essentially grandfathered under Part II.4 until the corresponding regulations can be created. This list is found in the new amended s. 15 (found in Bill 197, Sched 6 at s. 21(1)) and includes 10 Class Assessments (for example: "GO Transit Class Environmental Assessment", "Municipal Class Environmental Assessment", "Class Environmental Assessment for Waterpower Projects", etc).

The new Parts II.3 and II.4 are complete rewrites of the original Parts II and II.1, but do encompass roughly similar processes for the more onerous assessment process (formerly Part II, now Part II.3) and for a class environmental assessment process (formerly Part II.1, now Part II.4). The Minister can deem a Part II.3 project to be a Part II.4 project and vice-versa and, has (always had) broad power to impose additional conditions on a project.

iii. Powers to impose conditions on future changes

Among the Minister's power to approve, refuse or impose conditions upon a project, the Schedule 6 amendments add the new subsections 9(1)(b)(iv.1) and (iv.2) which allow the Minister to consider changes to the project that might be contemplated after the approval is given, and to create a process in respect of any possible future changes, require further consultation about such changes, and/or attached conditions. This power to contemplate and limit future changes adds to the already-existing provision that considers a changed project to be a new project for the purpose of the *Act*, requiring a new assessment and application for approval.

iv. Changes regarding waste disposal

The current *Act* has a short Part II.2 which requires a municipality to obtain approval under the *Act* for any waste-disposal undertaking where third-party facilities or services are used (by contract or other arrangement) for the final disposal of waste (at a dump, by landfilling, or by incineration).

Schedule 6 of Bill 197 removes this part. It adds a new section 6.0.1, which requires the proponent of a waste disposal project (which may or may not be a municipality) to demonstrate approval for the project from all municipalities impacted by the project (where

or near where the waste is to be disposed). This appears to add a clearer requirement of consultation/approval, but the specific mention of third-party contracting is removed.

Conclusion

As mentioned in the introduction, the Schedule 6 amendments to the *Environmental Assessment Act* have no clear immediate impact on CUPE members. However, we do not yet have the regulations clarifying which kinds of projects will fall under the two parts, and it is unclear at this point whether the amendments will have an effect of making it easier and/or more desirable for municipalities to contract out certain services, including waste disposal.

Schedule 7: Farm Registration and Farm Organizations Funding Act

Schedule 7 makes certain amendments to the *Farm Registration and Farm Organizations Funding Act, 1993*, SO 1993, c 21 ("*FRFOFA*").

The *FRFOFA* is a piece of legislation that governs registration requirements for the operation of farming businesses in Ontario. It also puts in place a funding regime for organizations representing the interests of Ontario farmers.

The changes made by Bill 197 relate to procedural issues relating to license denial appeals, funding arrangements for francophone farming organizations, and methods of service of documents under the *FRFOFA*.

Implications for CUPE

There are no known implications relating to CUPE's interests. CUPE does not represent workers in the agriculture sector.

Schedule 8: Justice of the Peace Act

Schedule 8 makes certain amendments to the *Justices of the Peace Act*, RSO 1990, c J.4.

Justices of the peace are provincially appointed judicial officials who deal with provincial offences and a number of criminal matters, such as bail hearings.

Bill 197 proposes amendments to the selection process for justices of the peace.

Implications for CUPE

There are no known implications for CUPE. CUPE is generally not involved in litigation before justices of the peace in Ontario.

Schedule 9: Marriage Act

Currently, the *Marriage Act* provides that a marriage licence is valid for three months. Schedule 9 would amend the Act to provide that if the three-month validity period includes a period in which there is an emergency declared throughout Ontario, the licence remains valid throughout the period of emergency and until 24 months after the emergency ends, if particular conditions are met.

The proposed amendment would have no impact on CUPE.

Schedule 10: Ministry of Municipal Affairs and Housing Act

Schedule 10 would add section 12 to the *Ministry of Municipal Affairs and Housing Act*. Section 12 would establish the Provincial Land and Development Facilitator. Section 12 also sets out the functions of the Facilitator, providing that the Facilitator, at the direction of the Minister, would advise and make recommendations to the Minister in respect of growth, land use and other matters, including Provincial interests. The Facilitator would also perform such other functions as the Minister may specify.

The Facilitator position already currently exists. The Facilitator is currently listed on the website for the Ministry of Municipal Affairs and Housing. As such, Schedule 10 would appear to formalize the creation of this office.

As set out on the Ministry website, the Facilitator also currently operates as an "impartial facilitator" when such a matters crosses municipal boundaries or watersheds, falls under two or more different ministries, or relates to provincial legislation, plans and policies. Presumably under Schedule 10 the Facilitator could continue in this role as an "other function" specified by the Minister.

The proposed amendments would have no direct impact upon CUPE.

Schedule 11: Modernizing Ontario For People and Business Act, 2020

Schedule 11 relates to the functions of the Ministry of Economic Development, Job Creation and Trade which includes, according to the Ministry website, to "cut red tape by eliminating unnecessary regulations to make Ontario companies more competitive".

Some of these reduction measures in the past have related to labour standards and employment laws, and therefore the requirements set out below could relate to proposed new laws, regulations, policies and forms (or amendments to existing law, regulations, policies and forms) that affect CUPE in some way or upon which CUPE would wish to submit comments to the relevant ministry.

For example, Bill 47: Making Ontario Open for Business Act which became law on November 21, 2018, repealed changes the previous government had made to labour standards and employment laws under Bill 148. Those legislative changes were referred to as among "Actions we've taken to date" in the Government's "2019 Burden Reduction Report: Cutting Red Tape That Holds Back Investment and Job Creation" and cited as saving money for businesses.

As set out below, Schedule 11 would expand upon the existing requirement that responsible ministers conduct and publish of an "analysis of regulatory impact" for new or amended regulations made and approved by the Lieutenant Governor in Council (i.e. Cabinet). Schedule 11 would expand the "instruments" covered by the Act to include draft legislation not yet introduced to the Legislature, regulations made or approved by Cabinet or a minister, and policies and forms made by ministers.

Schedule 11 would also expand the requirement that offsets be made within a prescribed time for any increased administrative costs caused by regulations made or approved by Cabinet or ministers, and to policies and forms made by ministers. There would be no requirement that any offset be made for costs caused by legislation.

Current Statutory Requirements

Schedule 11 would repeal two previous Acts and enacts many of the provisions from those Acts: The *Burden Reduction Reporting Act, 2014* and the *Reducing Regulatory Costs for Business Act, 2017*.

The current *Burden Reduction Reporting Act, 2014* requires the Minister of Economic Development, Job Creation and Trade to publish an annual report outlining the actions taken by the Government to reduce burdens as well as the Government's future burden reduction goals. "Burden" is defined in s. 1 of the Act as "a cost that may be measured in terms of money, time or resources and is considered by the Minister in consultation with other members of the Government of Ontario to be unnecessary to achieve the purpose of the statutory, regulatory, procedural, administrative or other requirement that creates the cost."

The current *Reducing Regulatory Costs for Business Act, 2017* applies to any proposed new regulation or proposed amendment to an existing regulation to be made or approved by Cabinet. It requires that the Minister responsible for the administration of any such proposed regulation or amendment conduct "an analysis of the potential regulatory impact", including "the prescribed administrative costs" on any regulated entity, and publish this analysis. A "regulated entity" currently includes (subject to the regulations) every business, trade, occupation, profession, service or venture carried on with a view to profit. If a regulation creating or increasing one or more administrative costs on such regulated entitles is made or approved, a prescribed "offset" must then be made within a prescribed time after the regulation is made or approved, unless to do so would not be in the public interest.

It may be of note that the General Regulation under the *Reducing Regulatory Costs for Business Act, 2017* currently provides certain exceptions for when the offset requirement does not apply, including where the specified regulation is made "in response to an emergency that requires extraordinary measures to address an urgent matter affecting the public interest, including health, safety or the environment."

Currently, the details of all proposed regulations to be made or approved by Cabinet are published online on the Ontario Government's "Regulatory Registry" website. An "Analysis of Regulatory Impact" is included for each proposed regulation, including any anticipated new administrative costs. Comments are publicly invited to be made to the relevant ministry within a stated period of time.

Expansion of Application Beyond Regulations by Cabinet

Schedule 11 would expand, beyond regulations made or approved by Cabinet, the types of instruments for which the minister responsible is required to conduct and publish an analysis of potential regulatory impact. Schedule 11 would also expand the "instruments" covered to include (subject to any prescribed exceptions):

a) a draft bill before its introduction in the Legislature,
b) a regulation made or approved by a minister (i.e. not just those regulations made or approved by Cabinet);
c) any policy or form made by a minister, and
d) any other instrument that may be prescribed.

There would no longer be any reference to an "order" that may be prescribed, although it is possible that an order may fall under "any other type of instrument that may be prescribed".

Expansion of definition of Administrative Costs to Non-Profit "Regulated Entities"

The definition of "administrative cost" would be expanded to include those costs imposed on non-profit business, trades, occupations, professions, services or ventures. Schedule 11 amends this definition to specifically apply to such entities "whether or not carried on with a view to profit". This would arguably include increased administrative costs for trade unions and non-profit employers in the "analysis of regulatory impact" conducted by ministers when considering administrative costs imposed by proposed new or amended regulations, policies or forms.

Certain Requirements do not Apply to Draft Legislation

The definition of an "administrative cost" under Schedule 11 would be expanded to include "a cost imposed on a regulated entity as a consequence of complying with a regulation, policy or form".

Notably, there would be no reference to "draft legislation" in the definition of an administrative cost. This makes sense, as legislation is only effective once it receives Royal Assent, and the proposed new Act does not apply to such legislation. There can be no administrative costs associated with "draft" legislation.

As a result, the only requirement for draft legislation would be for the minister responsible to follow the guiding principles (set out below) and to publish a regulatory impact analysis – however such analysis would not be required to reference any administrative costs of complying with the proposed legislation.

Schedule 11 would not apply to draft legislation after it has been introduced to the Legislature. Nor would it apply to statutes that have received Royal Assent (including statutes that amend other statutes).

Guiding Principles for all Instruments

Schedule 11 requires the minister responsible to take into account the following principles when developing any "instrument" (which includes draft legislation not yet introduced to the Legislature, regulations made or approved by minister or Cabinet, and policies and forms made by minister):

1. Recognized industry standards or international best practices should be adopted.
2. Less onerous compliance requirements should apply to small businesses than to larger businesses.
3. Digital services that are accessible to stakeholders should be provided.

4. Regulated entities that demonstrate excellent compliance should be recognized.
5. Unnecessary reporting should be reduced, and steps should be taken to avoid requiring stakeholders to provide the same information to government repeatedly.
6. An instrument should focus on the user by communicating clearly, providing for reasonable response timelines and creating a single point of contact.
7. An instrument should specify the desired result that regulated entities must meet, rather than the means by which the result must be achieved.

Principles 1, 2 and 4 already appear in the *Reducing Regulatory Costs for Business Act, 2017*. Principles 3, 5, 6 and 7 would be newly specified legislative requirements.

If the minister responsible for administering an instrument believes it is not possible or not appropriate for the instrument to meet these principles, a rationale would have to be provided to the Minister of Economic Development, Job Creation and Trade.

Schedule 12: Municipal Act, 2001

Schedule 12 amends several provisions of the *Municipal Act, 2001* to allow a municipal council or local board to amend its procedure by-law to provide for electronic participation in meetings of the council, local board, or committees of either and to provide for proxy voting. Such by-law may provide that a member of a council, local board or committee attending electronically can be counted in determining quorum and also, that such members can participate electronically in a meeting that is open or closed to the public.

Schedule 12 would have no direct impact on CUPE. However, CUPE may need to have an understanding of any new process of electronic participation when CUPE has an interest in the outcome of the votes or activities of such councils, local boards or committees, or when attending a meeting open to the public.

Schedule 13: Occupational Health and Safety Act

Schedule 13 amends the *Occupational Health and Safety Act* by adding one single subsection, namely subsection 70(3). Section 70 of the Act addresses the regulation-making power of the Cabinet, and under the Act Cabinet already has the power to make regulations adopting by reference (in whole or in part) any code or standard and requiring compliance with any code or standard that is adopted. In addition, Cabinet may adopt by reference any criteria or guide in relation to the exposure of a worker to any biological, chemical or physical agent or combination thereof.

Schedule 13 merely confirms that Cabinet's ability in these respects includes the power to adopt a code, standard, criteria or guide as they "may be amended from time to time." No other changes are made to the OHSA, and this Schedule comes into force on the day the *COVID-19 Economic Recovery Act, 2020,* receives Royal Assent.

Schedules 14 and 15: Ontario Educational Communications Authority Act and Ontario French-Language Educational Communications Authority Act

Schedules 14 and 15 conveniently can be discussed together since they are more or less identically worded, and respectively repeal and replace precisely the same things found in both the *Ontario Educational Communications Authority Act* (i.e., "TVO") (Schedule 14), and the *Ontario French-Language Educational Communications Authority Act, 2008* (i.e., "TFO") (Schedule 15).

By way of brief background, TVO has existed since 1970 and, among other things, establishes and administers programs and materials in the educational broadcasting and communication fields. It self-glosses as a "trusted technological extension of Ontario's public education system," and has become the province's partner for digital learning both inside and outside the classroom. Some of TVO's current free digital learning tools and resources in the province include:

- tvo kids - JK – grade 5 learning through videos, games and digital content that supports the learning of key strands of Ontario's school curriculum.
- tvo mPower – SK – grade 6 foundational math skills through free online games.
- tvo Mathify – covers grade 6 – 10 math skills with 1:1 online tutoring with a certified teacher.
- tvo ILC – the MOE's designated online high school, which allows students to earn high school credits or a full secondary school diploma online.
- tvo Teach Ontario – an online community where teachers can share best practices, lesson plans, and collaborate on ideas to support stronger student achievement and engagement.

Similarly, the Ontario French-Language Educational Communications Authority governs "TFO" and is the province's source for Franco-Ontarian educational and cultural multimedia projects for French-speaking Ontario.

Turning back to Bill 197, both TVO and TFO already provide and broadcast "distance education programs" under their governing legislation. Schedules 14 and 15 seemingly only further clarifies that such programs specifically include courses of study "online" that do not require the physical attendance by the student at a school and, may be taught in any of grades

JK to grade 12. With the unfortunate likelihood that schools will either be permanently or partially closed to students come September (i.e., a hybrid scenario of both remote learning and alternating attendance at school), the government likely envisages a greater partnership role for TVO and TFO in providing at-home learning through enhanced online instruction for students. These Schedules provide that the respective Authorities over TVO and TFO are committed to supporting the establishment, administration and coordination of distance education programs by or with prescribed persons or entities. Related regulation-making powers are also added to the Acts. The Schedules come into force on a day proclaimed by the Lieutenant Governor.

Schedule 16: Payday Loans Act, 2008

Schedule 16 amends the *Payday Loans Act, 2008*, and comes into force 30 days after the day the *COVID-19 Economic Recovery Act, 2020,* receives Royal Assent. Granted payday loans are well outside my labour practice wheelhouse, it appears that the proposed amendments/additions may offer some form of consumer protection for vulnerable consumers. For example, Schedule 16 sets a maximum interest rate of 2.5 per cent per month (not to be compounded) on the outstanding principal under a payday loan agreement if the advance under the agreement is $1,500 or less and the term of the agreement is 62 days or less. The amount of the advance and the term of the agreement required for this new section of the Act to apply can be changed by regulation, as can the maximum interest rate that may be charged.

In addition, another section of the Act will be repealed so that a lender cannot charge more than $25 for a dishonoured cheque, pre-authorized debit, or any other dishonoured instrument of payment received from the borrower. Currently, there is no cap under the Act for this, and a lender may impose "reasonable charges" to recover the administrative costs associated with a borrower's bad cheque. Also, a lender can only impose and collect this fee from the borrower once with respect to each payday loan agreement. One or two other incidental changes to the Act are also made by Schedule 16.

Schedule 17: Planning Act

The focus of the Planning Act changes is primarily on section 37, which is a section that has provided for community benefit charges that have been used by municipalities with high levels of development activity to essentially require developers to make a payment towards the community in which their development sits, for example the building of municipal services infrastructure, building parks, building or renovating community centres, etc.

Municipalities previously had broad degree of flexibility in how the money was spent, though this was significantly curtailed under as-yet un-proclaimed amendments made in 2019. Bill 197 will further limit municipal flexibility. Community benefit charges may no longer be imposed in relation to buildings of five or fewer at- or above-ground stories, fewer than ten residential units, or to redevelopments adding ten or fewer residential units.

A strict dividing line is created between things that may be funded by community benefit charges under the Planning Act and things that may be funded by development charges under the Development Charges Act, 1997. Funds raised as through community benefit charges may not be used to pay for things that are set to be paid for through development charges.
The Bill also makes changes to the section of the Planning Act that provides for the conveyance of land for park purposes to add a process for developers to challenge municipal determinations of value to the Local Planning Appeals Tribunal. This will permit developers to tie up attempts to determine the value of property in an appeals process at the LPAT, which will give greater leverage dealing with planning departments.

The powers of the Minister of Municipal Affairs and Housing regarding zoning and subdivision control are also increased by this legislation. These changes allow the Minister to, by order, exempt certain developments from various obligations imposed under section 41 of the Planning Act or under section 114 of the City of Toronto Act. This appears to be a direct attack on inclusionary zoning policies of the City of Toronto.

While this legislation is unlikely to affect CUPE directly, it may affect the funding available for municipal functions that employee CUPE members.

Schedule 18: Provincial Offences Act

Schedule 18 amends the *Provincial Offences Act* (POA) to eliminate requirements that certain filings be conducted in person, remove a precondition for an electronic meeting that either the defendant or prosecutor be unable to attend in person due to their remoteness, and allow for certain requirements to be met without the necessity of personal attendance.

Section 26 of the POA is amended to allow for service of a summons "in any other manner permitted by the regulations." Currently, section 26 allows for service through registered mail or personal delivery "or if that person cannot conveniently be found, by leaving it for the person at the person's last known or usual place of abode with an inmate thereof who appears to be at least sixteen years of age." There is currently no regulation setting out another manner

of service. Presumably, the regulation could allow for service methods involving electronic means.

The POA is amended to introduce a requirement that, prior to accepting a plea, the court satisfies itself that the defendant does not believe their ability to conduct a defence is compromised by participating via electronic methods and that the defendant is not being unduly influenced by circumstances or persons at the location where they are physically located.

The POA is further amended to facilitate electronic hearings and allow for warrants to be requested via "electronic communication" as opposed to just "telecommunication."

Schedule 19: Public Transportation and Highway Improvement Act

Schedule 19 amends the *Public Transportation and Highway Improvement Act* to remove certain rights to a hearing that an owner of expropriated land has under the *Expropriations Act, 1990*. Essentially, there would be no hearing under the *Expropriations Act*, but the government could establish a process for receiving and reviewing comments from impacted landowners.

Schedule 20: Transit Oriented Communities Act

Schedule 20 amends the *Transit-Oriented Communities Act* to allow the government to designate certain lands as "transit-oriented community land" if, in the opinion of the government, it is or may be required to support a transit-oriented community project.

Transit-oriented community projects are defined as any development project of any nature or kind and for any usage done in connection with a priority transit project. Priority transit projects include the Ontario Line, the Scarborough Subway Extension, the Yonge Subway Extension and the Eglinton Crosstown West Extension. As currently drafted, the legislation does not apply to other transit-oriented community projects but could be applied more broadly with a simple amendment in the future. Other Municipalities in Ontario may push to have a broader application of this Act.

If the expropriation is for a transit-oriented community project and at least some of the land is designated as transit-oriented community lands than a hearing under the *Expropriations Act* is not required. The Minister may establish a process by which they will accept and review comments from property owners.

The Minister is empowered to "establish, acquire, manage, participate in or otherwise deal with corporations, partnerships, joint ventures or other entities for the purpose of investing

assets in, supporting or developing transit-oriented community projects related to priority transit projects." This essentially allows the government to engage with the private sector broadly with respect to the identified transit-oriented community projects.

With respect to any corporation dealing with the government on a transit-oriented community project, the government is empowered to apply, not apply, or apply in a modified manner any provision of the *Corporations Act*, the *Business Corporations Act* and the *Corporations Information Act*.

I trust this memorandum is of assistance.

In Solidarity,

Devon M. Paul
Legal & Legislative Representative

ST/COPE 491