NORTON ROSE FULBRIGHT

# Legal update

## Ontario introduces new climate legislation

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**Environmental**

On February 24, Bill 172, the *Climate Change Mitigation and Low-carbon Economy Act* (the Act), was introduced in the Ontario legislature. The greenhouse gas (GHG) emission target reductions stated in this proposed Act are ambitious: a 15% reduction from 1990 levels by the end of 2020, a 37% reduction by the end of 2030, and an 80% reduction by the end of 2050. To meet these targets, one key component of the Act is the introduction of a new cap-and-trade program. This program will then fund a Greenhouse Gas Reduction Account to support initiatives that reduce greenhouse gases.

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### Cap-and-trade program details

The new cap-and-trade program will be a significant change for both individuals and industries.

Individuals will face increased costs for GHG-emitting sources. For instance, this plan is expected to result in a price increase of about 4.3 cents a litre for gas, and about $5 a month for a residential natural gas bill. However, residential owners will have a rebate of $2 a month on their electricity bills and the premier has stated the program is not expected to increase electricity costs for industrial or commercial sectors.[1]

Meanwhile, industrial actors may be required to directly participate in the cap-and-trade system. Three types of participants in this program are identified: mandatory participants, voluntary participants, and market participants, all of whom must be registered. The details on who will be mandatory participants will be outlined in further regulations. Both mandatory and voluntary participants must remit emission allowances and credits that equal the number of GHG emissions that have been attributed to them over a specified time period called a “compliance period.”

So how do participants gain GHG emission allowances and credits to apply against their emissions? GHG emission allowances will be created and distributed to registered participants. In an initial transition period, some emission allowances will be distributed to registered participants such as large industrial emitters for free, consistent with the approach taken in Quebec. Nonetheless, the ultimate intention is the registered participants will purchase emission allowances.

The method of distribution is left open-ended at this point, with the Act allowing for auctions, direct sale, or other prescribed ways. Trade in these GHG emission allowances and credits is restricted to registered participants, and prohibitions are outlined against fraud and market manipulation. A framework is also established for offset initiatives to be registered and provide offset credits.

### Greenhouse Gas Reduction Account

The money from the purchase of emission allowances will be recorded in an account called the Greenhouse Gas Reduction Account. (This account will also record funds from administrative penalties and various other fees paid under the Act.) Amounts may be charged to this account and paid out of the Consolidated Revenue Fund to fund initiatives that support the reduction of GHGs, or to fund costs incurred in administering and enforcing the Act.

Schedule I to the Act outlines a number of initiatives that could be funded from the Greenhouse Gas Reduction Account, such as retrofitting buildings, support for zero-emission and plug-in hybrid vehicles, and projects relating to carbon capture and storage technology. Potential industrial initiatives include funding for technologies that reduce GHG emissions, switching from higher emission sources of energy, and changing processes or their inputs to low-carbon processes and inputs in order to reduce GHG emissions.

## Harmonization

Ontario's program does not operate in isolation from similar programs in North America, such as in Quebec or California. For this reason, the Act empowers the minister to enter into agreements with other jurisdictions to recognize their instruments within Ontario's cap-and-trade program, allowing for greater harmonization of different cap-and-trade programs and injecting a greater vitality in the carbon market.

Ontario's cap-and-trade program will be linked to Quebec's and California's cap-and-trade systems, thus forming a regulated tri-jurisdictional carbon market. Quebec and California established their own cap-and-trade systems in 2013 after years of discussion and preparation under the auspices of the Western Climate Initiative, an intergovernmental initiative developed by 11 jurisdictions to reduce GHGs. Last December, Manitoba also announced it would move to a cap-and-trade system and signed an MOU to this effect with Ontario and Quebec. All of these systems have similar technical features, including an auction mechanism for selling and purchasing carbon emission rights, and are operated on a common computerized system.

## Penalties

Failure to comply with the Act or any of its regulations will be an offence. Officers and directors may also be liable if a corporation commits an offence under the Act, if they directed, authorized, assented to, acquiesced in or participated in the offence, or failed to take reasonable care to prevent the corporation from committing the offence. There would be a six-year limitation period for penal prosecutions, from the date the offence first came to the attention of a provincial offences officer. The Act also provides for administrative penalties of up to $1 million, subject to a one-year limitation period. Corporate officers and directors will be exempt from such penalties.

## Summary

The Act will provide a number of new mechanisms for the government to regulate GHG emissions. In particular, the cap-and-trade program will have a far-reaching impact on a number of industries, although the timeframes are not yet set in stone. While there will be a transition period in which industrial participants would not have to pay for emission allowances, this is only a temporary measure, after which industrial participants will also have to purchase their emission allowances. Individuals will see increases in prices for fuels such as gasoline and natural gas.

Flowing from the cap-and-trade program, and funded largely by the purchase of emission allowances, the Greenhouse Gas Reduction Fund will allow for financing of a number of projects to assist in reducing carbon emissions, ranging from initiatives for retrofitting homes to initiatives for industrial changes.

While many of the more specific details will be forthcoming, Ontario's participation in the Western Climate Initiative provides an indication that Ontario intends to harmonize its cap-and-trade program with that of Quebec and California. As such, the details of the existing frameworks in those jurisdictions may be instructive for people likely to be affected by this new legislation.

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## Footnote

1 See http://www.cbc.ca/news/canada/toronto/ontario-budget-1.3461834

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