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Bill 2

(Chapter 10 of the Statutes of Ontario, 2018)

An Act respecting Hydro One Limited, the termination of the White Pines Wind Project and the labour disputes between York University and Canadian Union of Public Employees, Local 3903

The Hon. G. Rickford

Minister of Energy, Northern Development and Mines

1st Reading	July 16, 2018
2nd Reading	July 25, 2018
3rd Reading	July 25, 2018
Royal Assent	July 25, 2018



EXPLANATORY NOTE

*This Explanatory Note was written as a reader's aid to Bill 2 and does not form part of the law.
Bill 2 has been enacted as Chapter 10 of the Statutes of Ontario, 2018.*

The Bill enacts or amends various Acts. The major elements of the Bill are described below.

SCHEDULE 1 HYDRO ONE ACCOUNTABILITY ACT, 2018

The Schedule sets out the *Hydro One Accountability Act, 2018*. Constraints are placed on compensation for the directors, Chief Executive Officer and executives of Hydro One Limited and its subsidiaries.

Hydro One Limited is required to annually make a public posting of the salaries paid to certain executives.

The *Ontario Energy Board Act, 1998* is amended to provide that the rates charged by Hydro One Limited and its subsidiaries shall not reflect amounts paid for executive compensation.

Immunity from litigation arising from this legislation is provided for.

SCHEDULE 2 WHITE PINES WIND PROJECT TERMINATION ACT, 2018

The Schedule sets out the *White Pines Wind Project Termination Act, 2018*, which provides for the termination, retroactive to July 10, 2018, of the White Pines Wind Project. Associated contracts and agreements between the IESO and wpd White Pines Wind Incorporated and other related parties, as well as associated permits and permissions issued to wpd White Pines Wind Incorporated are terminated and revoked.

The Act requires wpd White Pines Wind Incorporated to decommission the project in accordance with regulations made under the Act or under the *Environmental Protection Act*. In addition, it must maintain the lands in a clean and safe condition and ensure they are left that way when it leaves. wpd White Pines Wind Incorporated is liable to the Crown for any costs or liabilities the Crown may incur as a result of a failure of wpd White Pines Wind Incorporated to meet these obligations.

wpd White Pines Wind Incorporated is entitled to compensation under section 6 as a result of the termination of the White Pines Wind Project. The compensation is payable out of money appropriated for the purpose by the Legislature. The compensation payable is subject to various limitations and contingencies set out in that section and that may be further set out by regulations made under the Act.

Section 5 extinguishes any existing proceedings, and prevents future proceedings, against the Crown, the IESO and other specified related persons in relation to the terminated contracts and agreements, the revoked permits and approvals, and the Act itself and actions taken or not taken in accordance with it.

SCHEDULE 3 BACK TO CLASS ACT (YORK UNIVERSITY), 2018

The Schedule sets out the *Back to Class Act (York University), 2018*. It addresses the labour disputes between York University and the Canadian Union of Public Employees, Local 3903. It requires the termination of any strike or lock-out and provides a mechanism for achieving new collective agreements.

An Act respecting Hydro One Limited, the termination of the White Pines Wind Project and the labour disputes between York University and Canadian Union of Public Employees, Local 3903

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Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Contents of this Act

1 This Act consists of this section, sections 2 and 3 and the Schedules to this Act.

Commencement

2 (1) Subject to subsections (2) and (3), this Act comes into force on the day it receives Royal Assent.

(2) The Schedules to this Act come into force as provided in each Schedule.

(3) If a Schedule to this Act provides that any provisions are to come into force on a day to be named by proclamation of the Lieutenant Governor, a proclamation may apply to one or more of those provisions, and proclamations may be issued at different times with respect to any of those provisions.

Short title

3 The short title of this Act is the *Urgent Priorities Act, 2018*.

**SCHEDULE 1
HYDRO ONE ACCOUNTABILITY ACT, 2018**

INTERPRETATION

Definitions

1 In this Act,

“Chief Executive Officer” means the person holding the position of President and Chief Executive Officer of Hydro One Limited; (“chef de la direction”)

“compensation” means anything paid or provided, directly or indirectly, to or for the benefit of a person who performs duties and functions that entitle the person to be paid, and includes salary, benefits, perquisites and all forms of non-discretionary and discretionary payments; (“rémunération”)

“executive” means any person who holds the office of executive vice-president, vice-president, chief administrative officer, chief operating officer, chief financial officer, chief information officer, chief legal officer, chief human resources officer or chief corporate development officer, or holds any other executive position or office, regardless of the title of the position or office; (“cadre supérieur”)

“Minister” means the Minister of Energy, Northern Development and Mines or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; (“ministre”)

“subsidiary” has the same meaning as in the *Business Corporations Act*, but does not include a subsidiary incorporated in a jurisdiction outside Canada. (“filiale”)

EXECUTIVE AND DIRECTOR COMPENSATION

Compensation framework

2 (1) The board of directors of Hydro One Limited shall, within six months of the day this subsection comes into force, establish a new compensation framework for the board, the Chief Executive Officer and other executives in consultation with the Government of Ontario and the other five largest shareholders of Hydro One Limited.

Severance entitlements

(2) For greater certainty, the compensation framework must include policies governing the severance and other entitlements of the Chief Executive Officer and other executives in connection with any termination of their employment with Hydro One Limited.

Management Board approval

(3) The compensation framework established by Hydro One Limited under subsection (1), and any amendments to the framework, are not effective until they are approved by the Management Board of Cabinet.

Directives

3 (1) The Management Board of Cabinet may issue directives,

- (a) governing the compensation of the directors and the Chief Executive Officer and other executives of Hydro One Limited, including, without being limited to, directives restricting the total annual compensation payable to such persons; and
- (b) governing the development, form, manner and timing of the compensation framework provided for in subsection 2 (1) and any amendments to that framework.

Compliance

(2) Hydro One Limited and its board of directors shall comply with every directive made under subsection (1).

Publication

(3) Every directive made under subsection (1),

- (a) shall be made available to the public on request; and
- (b) shall be publicly posted on at least one Government of Ontario website.

Status

(4) Part III (Regulations) of the *Legislation Act, 2006* does not apply with respect to directives made under subsection (1).

Same, subsidiaries

4 Sections 2 and 3 apply, with necessary modifications, to each of Hydro One Limited’s subsidiaries.

Expiry

5 Sections 2, 3 and 4 cease to have effect on January 1, 2023.

TERMINATION OF RIGHTS AND CROWN IMMUNITY

No cause of action

6 (1) No cause of action arises against the Crown or any current or former member of the Executive Council or any current or former employee or agent of or adviser to the Crown, or against Hydro One Limited or any of its subsidiaries, or any of their current or former officers, directors, employees or agents, as a direct or indirect result of,

- (a) the enactment, operation, administration or repeal of any provision of this Act;
- (b) anything done or not done under this Act;
- (c) anything related in any way to the involvement of the Government of Ontario in compensation matters, or other aspects of the corporate governance, of Hydro One Limited or any of its subsidiaries;
- (d) any alleged misrepresentation within the meaning of applicable securities laws in any prospectus, document or other public statement related in any way to the involvement of the Government of Ontario in compensation matters at Hydro One Limited or any of its subsidiaries; or
- (e) any adverse market consequences or diminishment in the value of any securities in Hydro One Limited, or any of its subsidiaries, or any other investment, resulting from the enactment of this Act, anything done or not done in order to comply with this Act or the involvement of the Government of Ontario in the corporate governance of Hydro One Limited or any of its subsidiaries.

Proceedings barred

(2) No proceeding, including but not limited to any proceeding for a remedy in contract, restitution, tort, misfeasance, bad faith, trust or fiduciary obligation, and any remedy under applicable securities laws or any other statute, that is directly or indirectly based on or related to anything referred to in subsection (1) may be brought or maintained against the Crown or any current or former member of the Executive Council or any current or former employee or agent of or adviser to the Crown, or against Hydro One Limited or any of its subsidiaries, or any of their current or former officers, directors, employees or agents.

Application

(3) Subsection (2) applies to any action or other proceeding claiming any remedy or relief, including specific performance, injunction, declaratory relief, any form of compensation or damages, or any other remedy or relief, and includes a proceeding to enforce a judgment or order made by a court outside of Canada.

Retrospective effect

(4) Subsections (2) and (3) apply regardless of whether the cause of action on which the proceeding is purportedly based arose before, on or after the day this subsection comes into force.

Proceedings set aside

(5) Any proceeding referred to in subsection (2) or (3) commenced before the day this subsection comes into force shall be deemed to have been dismissed, without costs, on the day this subsection comes into force.

GENERAL

Salary disclosure

7 (1) Despite any other Act or agreement, not later than March 31 of each year, Hydro One Limited shall publish on its public website a record of the total annual compensation paid in the previous year by Hydro One Limited to or in respect of executives provided for in the regulations made under subsection (3).

Publication of proposed compensation changes

(2) The board of directors of Hydro One Limited shall publish on its website any proposed changes to its compensation frameworks for the board, the Chief Executive Officer or other executives at least 30 days prior to the date on which it seeks approval from the Management Board of Cabinet under subsection 2 (3).

Regulations

(3) The Lieutenant Governor in Council may make regulations governing the application of this section, including, without being limited to,

- (a) providing for executives or categories of executives whose compensation must be published under subsection (1);
- (b) requiring and specifying additional information to be published;
- (c) providing for the contents of the notice required under subsection (2);

- (d) requiring and governing the application of this section, with necessary modification, to executives of subsidiaries of Hydro One Limited.

Information and reports

8 (1) The Minister may request Hydro One Limited and such other persons and entities as the Minister considers appropriate to give the Minister information the Minister considers necessary for the purpose of administering the provisions of this Act, including information that,

- (a) discloses the financial or other details of any employment agreement or other contract with any director, Chief Executive Officer or other executive in respect of their employment by Hydro One Limited or any of its subsidiaries; or
- (b) discloses anything related to the compensation paid, payable or available to a director, Chief Executive Officer or other executive of Hydro One Limited or any of its subsidiaries.

Compliance

- (2) A person or entity who receives a request from the Minister for information or a report shall comply with the request.

Authorization

(3) The Minister may directly or indirectly collect personal information that the Minister is authorized to collect under this Act, and use it for the purpose of administering the provisions of this Act.

No notice to individual required

(4) Subsection 39 (2) of the *Freedom of Information and Protection of Privacy Act* does not apply with respect to any personal information collected under this section.

Regulations

9 (1) The Lieutenant Governor in Council may make any regulations that the Lieutenant Governor in Council considers necessary or desirable for carrying out the purposes, provisions and intent of this Act.

Same

(2) Without limiting the generality of subsection (1), the Lieutenant Governor in Council may make regulations defining or clarifying the meaning of any word or expression used in this Act but not otherwise defined.

Ontario Energy Board Act, 1998

10 Section 78 of the *Ontario Energy Board Act, 1998* is amended by adding the following subsection:

Same, Hydro One executive compensation

(5.0.2) In approving or fixing just and reasonable rates for Hydro One Limited or any of its subsidiaries, the Board shall not include any amount in respect of compensation paid to the Chief Executive Officer and executives, within the meaning of the *Hydro One Accountability Act, 2018*, of Hydro One Limited.

REPEAL, COMMENCEMENT AND SHORT TITLE

Repeal

11 (1) Subject to subsection (2), this Act is repealed on a day to be named by proclamation of the Lieutenant Governor.

(2) A proclamation may provide for the repeal of different provisions of this Act on different dates.

Commencement

12 (1) Subject to subsection (2), the Act set out in this Schedule comes into force on the day the *Urgent Priorities Act, 2018* receives Royal Assent.

(2) Sections 1 to 10 come into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

13 The short title of the Act set out in this Schedule is the *Hydro One Accountability Act, 2018*.

SCHEDULE 2
WHITE PINES WIND PROJECT TERMINATION ACT, 2018

Definitions

1 (1) In this Act,

“Crown” means the Crown in right of Ontario; (“Couronne”)

“IESO” has the same meaning as in subsection 2 (1) of the *Electricity Act, 1998*; (“SIERE”)

“prescribed” means prescribed by the regulations; (“prescrit”)

“regulations” means the regulations made under this Act; (“règlements”)

“White Pines Wind Project” means the project that is the subject of the Feed-in Tariff Contract referred to in paragraph 1 of subsection 3 (1). (“projet de parc éolien White Pines”)

Interpretation, reference to instruments

(2) A reference in section 2 or 3 to a permit, approval, contract, agreement or other instrument includes reference to any amendments made to the permit, approval, contract, agreement or other instrument.

Revocation of approvals, permits related to White Pines Wind Project

2 (1) The following are deemed to have been revoked on July 10, 2018:

1. Renewable energy approval number 2344-9R6RWR, dated July 16, 2015, issued to wpd White Pines Wind Incorporated under section 47.5 of the *Environmental Protection Act*.
2. Permit #PT-C-010-13, dated September 8, 2015, issued to wpd White Pines Wind Incorporated under clause 17 (2) (c) of the *Endangered Species Act, 2007* for impacts to the habitats of bobolink, Eastern meadowlark and Eastern whip-poor-will.

Further revocations by regulation

(2) Any other approval, permit or other instrument issued to wpd White Pines Wind Incorporated in relation to the White Pines Wind Project that may be prescribed for the purposes of this subsection is deemed to have been revoked on July 10, 2018 or, if the regulations so provide, is revoked or deemed to have been revoked on such later date as the regulations may specify.

Termination of contracts, agreements related to White Pines Wind Project

3 (1) The following are deemed to have been terminated on July 10, 2018:

1. The contract dated May 4, 2010 and titled “Feed-in Tariff Contract” between the IESO and wpd White Pines Wind Incorporated.
2. Any agreements related to the contract referred to in paragraph 1 to which the IESO and wpd White Pines Wind Incorporated are parties, including the agreement dated June 22, 2018, titled “Secured Lender Consent and Acknowledgement Agreement” and entered into by the IESO, wpd White Pines Wind Incorporated, and KfW IPEX-Bank GmbH as security agent.

Further terminations by regulation

(2) Any other contract or agreement to which wpd White Pines Wind Incorporated was a party in relation to the White Pines Wind Project that may be prescribed for the purposes of this subsection is deemed to have been terminated on July 10, 2018 or, if the regulations so provide, is terminated or deemed to have been terminated on such later date as the regulations may specify.

Duties of wpd White Pines Wind Incorporated

4 (1) wpd White Pines Wind Incorporated shall ensure that the White Pines Wind Project is decommissioned in accordance with regulations made under this Act or the *Environmental Protection Act*.

Clean and safe conditions

(2) wpd White Pines Wind Incorporated shall ensure that until it withdraws from the lands on which the White Pines Wind Project is located those lands are maintained in a clean and safe condition, and that they are left that way on its withdrawal from the lands.

Liability for related Crown costs

(3) wpd White Pines Wind Incorporated is liable to the Crown for any costs or liabilities the Crown may incur as a result of,

- (a) a failure of wpd White Pines Wind Incorporated to meet its obligations under subsection (1) or (2); or

- (b) wpd White Pines Wind Incorporated not maintaining the lands on which the White Pines Wind Project is located in a clean and safe condition on and after July 10, 2018 and before the day this Act comes into force.

Off-set

- (4) For greater certainty, amounts payable to the Crown under subsection (3) may be set off against compensation payable by the Crown under section 6.

Extinguishment of causes of action

5 (1) No cause of action arises against the Crown, any current or former member of the Executive Council or any current or former employee or agent of or advisor to the Crown, or against the IESO or any of its current or former directors, officers, employees or agents, as a direct or indirect result of,

- (a) the enactment, operation, administration or repeal of any provision of this Act or the regulations;
- (b) anything done or not done in order to comply with this Act or the regulations;
- (c) any revocation, cessation or termination of an instrument or of contractual or other rights under this Act; or
- (d) any representation or other conduct that is related, directly or indirectly, to the White Pines Wind Project or any instrument referred to in section 2 or 3.

Proceedings barred

(2) No proceeding, including but not limited to any proceeding for a remedy in contract, restitution, tort, misfeasance, bad faith, trust or fiduciary obligation, or any remedy under any statute, that is directly or indirectly based on or related to anything referred to in subsection (1) may be brought or maintained against a person referred to in that subsection.

Application

(3) Subsection (2) applies to any action or other proceeding claiming any remedy or relief, including specific performance, injunction, declaratory relief, any form of compensation or damages, or any other remedy or relief, and includes a proceeding to enforce a judgment or order made by a court or tribunal outside of Canada.

Retrospective effect

(4) Subsections (2) and (3) apply regardless of whether the cause of action on which the proceeding is purportedly based arose before, on or after the day this Act comes into force.

Proceedings set aside

(5) Any proceeding referred to in subsection (2) or (3) that is commenced before the day this Act comes into force is deemed to have been dismissed, without costs, on the day this Act comes into force.

No compensation payable

(6) No person is entitled to any compensation, other than the compensation provided for under section 6, or any other remedy or relief for the revocation, cessation or termination of an instrument or of contractual or other rights under this Act.

Aboriginal or treaty rights

(7) This section does not apply to a cause of action that arises from any aboriginal or treaty right that is recognized and affirmed by section 35 of the *Constitution Act, 1982*.

No expropriation

(8) Nothing in this Act and nothing done or not done in accordance with this Act constitutes an expropriation or injurious affection for the purposes of the *Expropriations Act* or otherwise at law.

Compensation

6 (1) The Crown shall pay compensation to wpd White Pines Wind Incorporated in accordance with this section.

Amount

(2) The amount of compensation payable to wpd White Pines Wind Incorporated under subsection (1) shall be determined in accordance with the following formula, subject to subsection (4):

$$(A + B + C) - (D + E)$$

where,

A = the expenses reasonably incurred by wpd White Pines Wind Incorporated in respect of the White Pines Wind Project in relation to,

- (i) development, acquisition, leasing and construction costs,
- (ii) employee termination payments,

(iii) subcontractor losses or landowner losses, and

(iv) decommissioning costs and other costs required to wind up the White Pines Wind Project,

B = the debt amount and debt make-whole amount in respect of which wpd White Pines Wind Incorporated is liable in relation to the White Pines Wind Project,

C = any additional amount or thing that may be prescribed,

D = all of wpd White Pines Wind Incorporated accounts receivable related to the White Pines Wind Project, including any insurance proceeds due to wpd White Pines Wind Incorporated or which would have been due to it had it duly pursued any claim to which it might have been entitled, all amounts payable to wpd White Pines Wind Incorporated in relation to the White Pines Wind Project, other than any such amounts payable by the Crown under this Act, and all amounts in bank accounts belonging to wpd White Pines Wind Incorporated in relation to the White Pines Wind Project, and

E = such rights and assets of wpd White Pines Wind Incorporated in respect of the White Pines Wind Project that are not referred to in “D” as may be prescribed.

Expenses

(3) The following shall not be included as expenses for the purposes of “A” in subsection (2):

1. An expense that exceeds the fair market value of the goods or services for which it was incurred.
2. An expense or portion of an expense for which wpd White Pines Wind Incorporated has been reimbursed by another person.

Regulations may limit amount of compensation payable

(4) The compensation payable in accordance with the formula set out in subsection (2) is subject to,

- (a) any monetary limits in the compensation payable under this section that may be prescribed; and
- (b) any monetary limits in compensating any expense or liability or any class of expense or liability that would otherwise be compensable under this section that may be prescribed.

Regulations may specify valuation timing

(5) The calculation of an amount under subsection (2) is subject to such rules respecting valuation dates or periods as may be prescribed.

Compensation contingent on accounting

(6) Despite subsection (1), no compensation is payable to wpd White Pines Wind Incorporated under this section unless, no later than the first anniversary of the day this Act comes into force, wpd White Pines Wind Incorporated submits to the Crown a full accounting of the amounts described in subsection (2), including any receipts or other proof of payment.

Audit

(7) wpd White Pines Wind Incorporated shall provide the Crown with reasonable access to their records, management staff, auditors and accountants for the purpose of reviewing and auditing any accounting submitted under subsection (6).

No compensation for loss of goodwill, etc.

(8) Unless provided for by regulations made for the purposes of “C” in subsection (2), no compensation is payable under this section for any opportunity costs or for any loss of goodwill or possible profits.

Money appropriated by the Legislature

(9) The compensation payable under this section shall be paid for out of the money appropriated for the purpose by the Legislature.

Disputes

(10) Any dispute relating to this section shall be determined by binding arbitration under the *Arbitration Act, 1991*.

Regulations

7 (1) The Lieutenant Governor in Council may make regulations,

- (a) respecting anything that, in this Act, may be prescribed or done by regulation;
- (b) defining any term or phrase used in this Act that is not defined in this Act;
- (c) governing the decommissioning of the White Pines Wind Project by wpd White Pines Wind Incorporated;
- (d) setting out a maximum amount or a method of determining a maximum amount that may be paid as compensation under section 6, or maximum amounts or a method of determining maximum amounts for any expense or liability or any class of expense or liability that would otherwise be compensable under that section;

- (e) setting out rules respecting valuation dates or periods, including dates or periods occurring before this Act came into force, for the purposes of subsection 6 (5);
- (f) governing such transitional matters as the Lieutenant Governor in Council considers necessary or advisable to facilitate the implementation of this Act.

Conflict

(2) In the event of a conflict between a regulation made under clause (1) (c) and a regulation made under the *Environmental Protection Act*, the regulation made under clause (1) (c) prevails to the extent of the conflict.

Different valuation dates, periods

(3) A regulation made under clause (1) (e) may specify different rules for different expenses, liabilities, rights, assets or other things to be calculated under subsection 6 (2), or for different classes of such expenses, liabilities, rights, assets or other things.

Retroactive regulations

(4) A regulation made under this section is, if it so provides, effective with reference to a period before it is filed.

Commencement

8 The Act set out in this Schedule comes into force on the day the *Urgent Priorities Act, 2018* receives Royal Assent.

Short title

9 The short title of the Act set out in this Schedule is the *White Pines Wind Project Termination Act, 2018*.

**SCHEDULE 3
BACK TO CLASS ACT (YORK UNIVERSITY), 2018**

Preamble

York University and the Canadian Union of Public Employees, Local 3903 were parties to collective agreements that have expired.

The parties have engaged in collective bargaining for approximately nine months for new collective agreements, including conciliation and mediation with the assistance of Ministry of Labour staff, but have failed to resolve their disputes. A vote of the members of three bargaining units represented by the Union in respect of the University's last offer was conducted. That offer was rejected by all of the bargaining units.

Approximately six weeks after the strike began, the Minister of Labour took the extraordinary step of appointing an Industrial Inquiry Commission to inquire into the dispute to help facilitate a resolution and to provide a report.

Subsequently, one of the bargaining units was able to reach an agreement with the University. However, negotiations in respect of the other two bargaining units remain at an impasse and the parties are clearly deadlocked.

The strike has been ongoing for more than 100 days. It is the longest post-secondary strike in Canadian history. The impacts of the labour disruption on students are significant and numerous. Approximately 37,100 students are enrolled in at least one course that is unable to progress while the strike continues. Approximately 45,000 students are missing grades that would be available but for the ongoing strike.

Alternate course completion options are not available or feasible for many of these students and full access to their courses is necessary for successful completion of their academic year. Students in programs subject to external regulatory, accreditation or licensing standards, such as Engineering, Law, Nursing and Teaching, are particularly at risk. Students in programs subject to accreditation may not have any alternate course completion options available to them. This jeopardizes the completion of the academic year for students in those programs and may also jeopardize their eligibility to write licensure exams. The acceptances to higher degree or professional school for students who are able to graduate based on alternate degree completion options offered by the University may be at risk due to unfulfilled requirements. In addition, the strike has required the University to greatly reduce its summer course offerings, impeding students' ability to obtain critical academic prerequisites for advanced areas of study and completion of their final degree requirements.

Post-secondary education serves a critical public function. A lengthy extension or loss of an academic year has significant personal, educational, social and financial implications for students and their families as well as serious organizational and economic impacts on employers, the University and the broader public. These negative consequences may be long term in nature and the repercussions could extend beyond the parties, the students and their families. The continuation of these disputes and the resulting disruption in education and its corresponding effects give rise to serious public interest concerns. The interests of students, families and the broader community require that these disputes be resolved.

Having regard to these serious circumstances, the considerable, though unfortunately unsuccessful, efforts that have been made to help the parties reach agreement and the clear deadlock in negotiations, the public interest requires an exceptional and temporary solution to address the matters in dispute so that new collective agreements may be concluded through a fair process of dispute resolution, affected staff and students can return to class and the normal post-secondary operation of the University can resume.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

INTERPRETATION AND APPLICATION

Definitions

1 (1) In this Act,

“bargaining agent” means the Canadian Union of Public Employees, Local 3903; (“agent négociateur”)

“employees” means the employees of the employer who are represented by the bargaining agent; (“employés”)

“employer” means York University; (“employeur”)

“listed bargaining unit” means either of the following:

1. The bargaining unit referred to as Unit 1 in the collective agreement between the employer and the bargaining agent effective from March 31, 2015 to August 31, 2017 as described in Article 3 of that agreement which unit is composed of all part-time employees registered at York University as full-time graduate students and employed in teaching, demonstrating, tutoring or marking.
2. The bargaining unit referred to as Unit 3 in the collective agreement between the employer and the bargaining agent effective from March 31, 2015 to August 31, 2017 as described in Article 3 of that agreement which unit is composed of all graduate students registered as full-time at York University who are receiving financial assistance from or

through the University and in connection with such assistance are employed in administrative, clerical and research work, save and except research assistants, supervisors, persons above the rank of supervisor, and persons for whom a trade union held bargaining rights at the date of application; (“*unité de négociation désignée*”)

“Minister” means the Minister of Labour; (“*ministre*”)

“new collective agreement”, when used with respect to a listed bargaining unit, means a collective agreement that,

- (a) applies to the employees in that unit, and
- (b) is executed after the day this Act receives Royal Assent or comes into force under subsection 21 (5); (“*nouvelle convention collective*”)

“parties”, when used in relation to a dispute, a dispute resolution proceeding dealing with the dispute or a new collective agreement, means the employer and the bargaining agent. (“*parties*”)

Unit 3

(2) For the bargaining unit referred to as Unit 3 and described in paragraph 2 of the definition of “listed bargaining unit” in subsection (1),

- (a) for greater certainty, and as set out in the collective agreement between the employer and the bargaining agent effective from March 31, 2015 to August 31, 2017, graduate students registered as full-time at York University who receive financial assistance from or through York University for research or academic activities which are predominantly for the purposes of advancing the students’ progress towards fulfilment of their program and degree requirements are not in that bargaining unit; and
- (b) the reference to “date of application” in paragraph 2 of the definition of “listed bargaining unit” in subsection (1) has the same meaning as in Article 3 of the collective agreement between the employer and the bargaining agent effective from March 31, 2015 to August 31, 2017 in respect of that unit.

Interpretation

(3) Expressions used in this Act have the same meaning as in the *Labour Relations Act, 1995*, unless the context requires otherwise.

Application of Act

2 (1) This Act applies to the employer, the bargaining agent and the employees in a listed bargaining unit if the employer and the bargaining agent have not executed a collective agreement after August 31, 2017 and before the day this Act receives Royal Assent with respect to that unit.

Application of *Labour Relations Act, 1995*

(2) Except as modified by this Act, the *Labour Relations Act, 1995* applies to the employer, the bargaining agent and the employees.

Conflict

(3) In the event of a conflict between this Act and the *Labour Relations Act, 1995*, this Act prevails.

STRIKES AND LOCK-OUTS

Duties of employer and bargaining agent

Operation of undertakings

3 (1) As soon as this Act receives Royal Assent, the employer shall use all reasonable efforts to operate and continue to operate its undertakings, including any operations interrupted during any lock-out or strike that is in effect immediately before this Act receives Royal Assent.

Termination of lock-out

(2) As soon as this Act receives Royal Assent, the employer shall terminate any lock-out of employees that is in effect immediately before this Act receives Royal Assent.

Termination of strike

(3) As soon as this Act receives Royal Assent, the bargaining agent shall terminate any strike by employees that is in effect immediately before this Act receives Royal Assent.

Same

(4) As soon as this Act receives Royal Assent, each employee shall terminate any strike that is in effect before this Act receives Royal Assent and shall, without delay, resume the performance of the duties of his or her employment or shall continue performing them, as the case may be.

Exception

(5) Subsection (4) does not preclude an employee from not reporting to work and performing his or her duties for reasons of health or by mutual consent of the employee and the employer.

Prohibition re strike

4 (1) Subject to section 6, no employee shall strike and no person or trade union shall call or authorize or threaten to call or authorize a strike by any employees.

Same

(2) Subject to section 6, no officer, official or agent of a trade union shall counsel, procure, support or encourage a strike by any employees.

Prohibition re lock-out

5 (1) Subject to section 6, the employer shall not lock out or threaten to lock out any employees.

Same

(2) Subject to section 6, no officer, official or agent of the employer shall counsel, procure, support or encourage a lock-out of any employees.

Strike or lock-out after new collective agreement

6 After a new collective agreement with respect to a listed bargaining unit is executed by the parties or comes into force under subsection 21 (5), the *Labour Relations Act, 1995* governs the right of the employees in that unit to strike and the right of the employer to lock out those employees.

Offence

7 (1) A person, including the employer, or a trade union who contravenes or fails to comply with section 3, 4 or 5 is guilty of an offence and on conviction is liable,

- (a) in the case of an individual, to a fine of not more than \$2,000; and
- (b) in any other case, to a fine of not more than \$25,000.

Continuing offence

(2) Each day of a contravention or failure to comply constitutes a separate offence.

Related matters

(3) Subsection 104 (3) and sections 105, 106 and 107 of the *Labour Relations Act, 1995* apply with necessary modifications with respect to an offence under this Act.

Deeming provision: unlawful strike or lock-out

8 A strike or lock-out in contravention of section 3, 4 or 5 is deemed to be an unlawful strike or lock-out for the purposes of the *Labour Relations Act, 1995*.

Terms of employment

9 Until a new collective agreement with respect to a listed bargaining unit is executed by the parties or comes into force under subsection 21 (5), the terms and conditions of employment that applied with respect to the employees in that unit on the day before the first day on which it became lawful for any of those employees to strike continue to apply, unless the parties agree otherwise.

DISPUTE RESOLUTION

Deemed referral to mediator-arbitrator

10 If this Act applies to the employer and the bargaining agent in respect of a listed bargaining unit, the parties are deemed to have referred to a mediator-arbitrator, on the day this Act receives Royal Assent, all matters remaining in dispute between them with respect to the terms and conditions of employment of the employees in that unit.

Appointment of mediator-arbitrator

11 (1) On or before the fifth day after this Act receives Royal Assent, the parties shall jointly appoint the mediator-arbitrator referred to in section 10 and shall forthwith notify the Minister of the name and address of the person appointed.

Same

(2) If the parties fail to notify the Minister as subsection (1) requires, the Minister shall forthwith appoint the mediator-arbitrator and notify the parties of the name and address of the person appointed.

Replacement

(3) If the parties notify the Minister that they agree that the mediator-arbitrator is unable or unwilling to perform his or her duties so as to make an award, the parties shall, on or before the fifth day after the notification, jointly appoint a new mediator-arbitrator and shall forthwith notify the Minister of the name and address of the person appointed.

Same

(4) If the Minister notifies the parties that in the Minister's opinion the mediator-arbitrator is unable or unwilling to perform his or her duties so as to make an award, the parties shall, on or before the fifth day after the notification, jointly appoint a new mediator-arbitrator and shall forthwith notify the Minister of the name and address of the person appointed.

Same

(5) If the parties fail to notify the Minister as subsection (3) or (4) requires, the Minister shall forthwith appoint a new mediator-arbitrator and notify the parties of the name and address of the person appointed.

Same

(6) The dispute resolution process shall begin anew on the appointment of a new mediator-arbitrator under subsection (3), (4) or (5).

Minister's power

(7) The Minister may appoint as a mediator-arbitrator a person who is, in the opinion of the Minister, qualified to act.

Delegation

(8) The Minister may delegate in writing to any person the Minister's power to make an appointment under this section.

Proof of appointment, etc.

(9) An appointment made under this section that purports to be signed by or on behalf of the Minister shall be received in evidence in any proceeding as proof, in the absence of evidence to the contrary, of the facts stated in it without proof of the signature or the position of the person appearing to have signed it.

Selection of method of dispute resolution

12 (1) The mediator-arbitrator shall select the method of dispute resolution and shall notify the parties of the selection.

Same

(2) The mediator-arbitrator shall consider all methods of dispute resolution, including mediation-arbitration and mediation-final offer selection, and in his or her sole discretion shall select the method that he or she believes is the most appropriate method having regard to the nature of the dispute.

Appointment and proceedings of mediator-arbitrator not subject to review

13 It is conclusively presumed that the appointment of a mediator-arbitrator made under section 11 is properly made, and no application shall be made to question the appointment or to prohibit or restrain any of the mediator-arbitrator's proceedings, including the selection of a method of dispute resolution made under section 12.

Jurisdiction of mediator-arbitrator

14 (1) The mediator-arbitrator has exclusive jurisdiction to determine all matters that he or she considers necessary to conclude a new collective agreement.

Time period

(2) The mediator-arbitrator remains seized of and may deal with all matters within his or her jurisdiction until the new collective agreement is executed by the parties or comes into force under subsection 21 (5).

Mediation

(3) The mediator-arbitrator may try to assist the parties to settle any matter that he or she considers necessary to conclude the new collective agreement.

Notice, matters agreed on

(4) As soon as possible after a mediator-arbitrator is appointed, but in any event no later than seven days after the appointment, the parties shall give the mediator-arbitrator written notice of the matters on which they reached agreement before the appointment.

Same

(5) The parties may at any time give the mediator-arbitrator written notice of matters on which they reach agreement after the appointment of a mediator-arbitrator.

Time limits

15 (1) The mediator-arbitrator shall begin the dispute resolution proceeding within 30 days after being appointed and shall make all awards under this Act within 90 days after being appointed, unless the proceeding is terminated under subsection 20 (2).

Extensions

(2) The parties and the mediator-arbitrator may, by written agreement, extend a time period specified in subsection (1) either before or after it expires.

Procedure

16 (1) The mediator-arbitrator shall determine the procedure for the selected method of dispute resolution but shall permit the parties to present evidence and make submissions.

Consolidation

(2) Without limiting the generality of subsection (1), a person who is the mediator-arbitrator for more than one dispute resolution proceeding under this Act may consolidate any of the proceedings or parts of the proceedings as he or she considers advisable.

Application of s. 48 (12) (a) to (i) of *Labour Relations Act, 1995*

(3) Clauses 48 (12) (a) to (i) of the *Labour Relations Act, 1995* apply, with necessary modifications, to proceedings before the mediator-arbitrator and to his or her decisions.

Exclusions

(4) The *Arbitration Act, 1991* and the *Statutory Powers Procedure Act* do not apply to dispute resolution proceedings under this Act.

Award of mediator-arbitrator

17 (1) An award by the mediator-arbitrator under this Act shall address all the matters to be dealt with in the new collective agreement with respect to the parties and a listed bargaining unit.

Criteria

(2) In making an award, the mediator-arbitrator shall take into consideration all factors that he or she considers relevant, including the following criteria:

1. The employer's ability to pay in light of its fiscal situation.
2. The extent to which services may have to be reduced, in light of the award, if current funding and taxation levels are not increased.
3. The economic situation in Ontario and in the Greater Toronto Area.
4. A comparison, as between the employees and comparable employees in the public and private sectors, of the nature of the work performed and of the terms and conditions of employment.
5. The employer's ability to attract and retain qualified employees.
6. The purposes of the *Public Sector Dispute Resolution Act, 1997*.

Restriction - discipline and discharge

(3) The mediator-arbitrator shall not include a provision in an award that prohibits the employer from discharging or disciplining an employee for just cause in respect of any activity that took place during the period that begins on the date on which a strike or lock-out in respect of the employee's bargaining unit became lawful and ends on the date on which a new collective agreement is executed by the parties or comes into force under subsection 21 (5).

Same

(4) Any dispute between the parties concerning discharge or discipline in respect of activities that took place during the period described in subsection (3) shall be determined through the grievance procedure and arbitration procedure established in the new collective agreement.

Retroactive alteration of terms of employment

(5) The award may provide for the retroactive alteration of one or more terms and conditions of employment, to one or more dates after August 31, 2017, and may do so despite section 9.

Effect of award

18 The award of a mediator-arbitrator under this Act is final and binding on the parties and on the employees.

Costs

19 Each party shall pay one-half of the fees and expenses of the mediator-arbitrator.

Continued negotiation

20 (1) Until an award is made, nothing in sections 10 to 19 prohibits the parties from continuing to negotiate with a view to making a new collective agreement and they are encouraged to do so.

New collective agreement concluded by parties

(2) If the parties execute a new collective agreement before an award is made, they shall notify the mediator-arbitrator of the fact and the mediation-arbitration proceeding is thereby terminated.

EXECUTION OF NEW COLLECTIVE AGREEMENT

Execution of new collective agreement

21 (1) Within seven days after the mediator-arbitrator makes an award, the parties shall prepare and execute documents giving effect to the award.

Same

(2) The documents required by subsection (1) constitute the new collective agreement between the parties.

Extension

(3) The mediator-arbitrator may extend the period referred to in subsection (1), but the extended period shall end no later than 30 days after the mediator-arbitrator made the award.

Preparation by mediator-arbitrator

(4) If the parties do not prepare and execute the documents as required under subsections (1) and (3), the mediator-arbitrator shall prepare the necessary documents and give them to the parties for execution.

Failure to execute

(5) If either party fails to execute the documents prepared by the mediator-arbitrator within seven days after receiving them, the documents come into force as though they had been executed by the parties and those documents constitute the new collective agreement between the parties.

REPEAL, COMMENCEMENT AND SHORT TITLE

Repeal

22 This Act is repealed on a day to be named by proclamation of the Lieutenant Governor.

Commencement

23 The Act set out in this Schedule comes into force on the day the *Urgent Priorities Act, 2018* receives Royal Assent.

Short title

24 The short title of the Act set out in this Schedule is the *Back to Class Act (York University), 2018*.