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Bill 37

An Act respecting civil liability for climate-related harms

Mr. P. Tabuns

Private Member's Bill

1st Reading October 1, 2018

2nd Reading

3rd Reading

Royal Assent



EXPLANATORY NOTE

The Bill enacts the *Liability for Climate-Related Harms Act, 2018*. The Act provides that a fossil fuel producer is strictly liable for climate-related harms that occur in Ontario if the producer is responsible for greenhouse gas emissions at a globally detectable level. The Act contains a definition of “climate-related harms”. Certain evidentiary matters are provided for.

An Act respecting civil liability for climate-related harms

Preamble

Climate change is real. It is already affecting Ontarians' lives as increased wildfires and flooding create significant and costly damage. Climate change threatens to make life more expensive as people and governments are required to pay for the harm it causes and for the protection of schools, roads, hospitals and homes from unprecedented flooding and other extreme weather events.

Enhanced legal tools are required so that governments, businesses and individuals can ensure that coal, oil and gas producers contribute their fair share to paying for the harms to which their products contribute and for the necessary steps to prevent future harms.

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

Interpretation

1 In this Act,

“climate change” means a long-term change in the Earth’s climate caused by the alteration of concentrations of greenhouse gas in the global atmosphere; (“changement climatique”)

“climate-related harms” means harms arising from climate change, including, without limitation,

- (a) economic loss or physical loss of property, infrastructure, structures, resources, or other assets,
- (b) the costs associated with obtaining and maintaining insurance reasonably required due to the risk of the losses described in clause (a),
- (c) death, injury, illness or other physical or psychological harms and the costs associated with treating or caring for persons suffering from them,
- (d) harm related to ocean acidification,
- (e) loss of land or damage to infrastructure due to rising sea levels, including slow-onset loss,
- (f) the costs of monitoring, researching and analyzing the climate and the weather if the costs are reasonably incurred to provide information about the effects of climate change and appropriate adaptation measures,
- (g) the costs of responding to emergencies arising from natural disasters associated with climate change,
- (h) the costs of constructing, renovating, repairing or improving infrastructure in order to minimize further such harms and costs, and
- (i) the costs of carrying out public education campaigns to inform the public about reducing and avoiding such harms and costs; (“dommages liés au climat”)

“production”, when used in respect of fossil fuels, includes exploration for sources of fossil fuels, exploitation of fossil fuels and sale of fossil fuels. (“production”)

Strict liability for climate-related harms

2 (1) Every corporation, partnership, trust or other entity that is engaged in the production of fossil fuels and to which a globally detectable level of greenhouse gas emissions can be attributed, as determined in the regulations, is strictly liable for climate-related harms that occur in Ontario.

Level of greenhouse gas emissions

- (2) The determination of a producer’s level of greenhouse gas emissions shall be based on,
- (a) emissions resulting from the producer’s production of fossil fuels; and
 - (b) emissions resulting from the use of those fossil fuels.

Same

(3) Even if the costs described in clauses (f) to (i) of the definition of “climate-related harms” in section 1 have not yet been incurred, subsection (1) applies with respect to those costs if the court determines that they are reasonably required for the planning, initiation or completion of the activities mentioned in those clauses.

Evidentiary matters

3 (1) In determining whether particular harms or costs constitute climate-related harms and in determining the quantum of damages or costs related to them, the court may have regard to,

- (a) scientific or statistical information or modelling;
- (b) historical experience; and
- (c) information derived from relevant studies, including information derived from sampling.

Evidence re climate change causing particular events

(2) In a case in which it is alleged that a particular weather event, flood or other event or series of such events was caused by climate change, evidence that climate change has doubled the likelihood of that type of event occurring is sufficient to demonstrate, on a balance of probabilities, that the event was caused by climate change or that climate change worsened the impact of the event.

Regulations

4 The Lieutenant Governor in Council may make regulations,

- (a) respecting the determination of the greenhouse gas emissions that can be attributed to a producer; and
- (b) respecting the determination of whether a producer’s greenhouse gas emissions level is globally detectable.

Commencement

5 This Act comes into force on the day it receives Royal Assent.

Short title

6 The short title of this Act is the *Liability for Climate-Related Harms Act, 2018*.