Bill 60, Fighting Delays, Building Faster Act, 2025

Submitted to: Minister of Municipal Affairs and Housing

Submitted by: Ontario Bar Association

Date: November 21, 2025

ONTARIO BAR ASSOCIATION
A Branch of the Canadian Bar Association

L'ASSOCIATION DU BARREAU DE L'ONTARIO
Une division de l'Association du Barreau canadien

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Introduction

The Ontario Bar Association ("**OBA**") appreciates the opportunity to comment on *Bill 60, Fighting Delays, Building Faster Act, 2025* ("***Bill 60***"). We provide comments and recommendations on the following schedules:

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Ontario Bar Association

Established in 1907, the OBA is the largest and most diverse volunteer lawyer association in Ontario, with close to 16,000 members, practicing in every area of law in every region of the province. Each year, through the work of our 40 practice sections, the OBA provides advice to assist legislators and other key decision-makers in the interests of both the profession and the public and we deliver over 325 in-person and online professional development programs to an audience of over 20,000 lawyers, judges, students, and professors.

This submission was prepared and reviewed by members of the OBA's Construction Law, Real Property Law, Administrative Law, Municipal Law, Immigration Law, Criminal Justice, Aboriginal Law, Environmental Law, and Constitutional, Civil Liberties and Human Rights Law sections. Members of these sections include barristers and solicitors in public and private practice in large, medium, and small firms, and in-house counsel across every region in Ontario with expertise in their respective areas of practice.

Comments & Recommendations

Construction Act

The OBA provides the following comments on the *Construction Act* (the "***Act***") amendments in *Bill 60*. We have attached Appendix "A" with proposed modifications to the draft language of the *Act*. Additions are underlined and in blue, and words removed are struck through and in red.

Annual Holdback Release

The OBA's submissions with respect to annual holdback release are aimed at ensuring clarity, fairness and consistency between the annual holdback release provisions and the prompt payment provisions of the *Act*.

We recommend revising the draft language of the *Act* so that the annual holdback release provisions:

(a) clarify that the holdback which must be released by the owner is basic holdback, not notice holdback;
(b) amend sections 22 and 24 of the Act to clearly permit the release of basic holdback without jeopardy;
(c) mirror the *Act*'s prompt payment provisions in circumstances where an owner does not make full payment of all accrued holdback as required by the *Act*;
(d) clarify how the annual holdback amount is to be determined; and
(e) clarify how the holdback is to be paid in circumstances where there are outstanding adjudications in respect of proper invoices given during the year for which holdback is to be released.

Issue 1 – clarification of type of holdback to be released annually

The following draft language is currently proposed for subsection 26(4) of the *Act* to provide for the payment of annual holdback:

> **Payment by owner**
>
> (4) At least 60 days but not later than 74 days after the date on which the notice of annual release of holdback is published, the owner shall make payment to the contractor of **all of the accrued holdback** in respect of services or materials supplied by the contractor during the

> year immediately preceding the anniversary, unless a lien has been preserved or perfected in respect of the contract…

The *Act* should clarify what is meant by "all of the accrued holdback".

Prior to the substantial performance of a contract, there are two types of potential holdback under the *Act*. The most common is the basic 10% holdback provided for under section 22 of the *Act*. In addition, there is "notice holdback" under section 24(2) of the *Act*, in an amount sufficient to satisfy any liens preserved or for which written notice of a lien was given.

Section 24(2) of the *Act* allows a person having a lien to interfere with payment on a project without needing to preserve its lien rights until the time at which those lien rights would otherwise expire.

As the draft language now removes the earlier draft provision which would cause lien rights to expire on an annual basis, and as notice holdback obligations have always been understood to continue absent such expiry (or the written notice of lien being vacated), it is our understanding that the intention of annual holdback release is not to supersede any notice holdback obligations which may have been triggered by a written notice of lien.

Further, we have always understood the intention of these amendments to be to provide for the release of basic holdback, and not to deal with notice holdback. This is consistent with the draft language of subsection 26(8), which refers to "the holdback required to be retained under subsection 22 (1)."

Accordingly, it is our recommendation that "all of the accrued holdback" be modified to read "all of the accrued holdback required to be retained under subsection 22(1)", consistent with the draft language of subsection 26(8). We have made this modification in Appendix "A".

Issue 2 – amending sections 22 and 24 to be consistent with annual holdback release provisions

In our view, it is important to amend those parts of the *Act* which create holdback obligations so that they are consistent with the required annual release of holdback without lien expiry. These changes are important given that *Bill 60* will create, for the first time, a regime of holdback release **without** lien expiry; until now, holdback release has always taken place only after the expiry or vacating of liens that may be claimed against that holdback.

Section 22, which establishes basic holdback, provides:

> **22** (1) Each payer upon a contract or subcontract under which a lien may arise shall retain a holdback equal to 10 per cent of the price of the services or materials as they are actually supplied under the contract or subcontract **until all liens that may be claimed against the holdback have expired or been satisfied, discharged or otherwise provided for under this Act**.

Section 24 creates holdback where notice **of a lien** is received – so when the lien expires or is vacated, the holdback obligation ceases to exist. Otherwise, the payer is under an express obligation to retain holdback, including basic holdback, contrary to the proposed scheme of annual holdback release.

> **24** (1) A payer may, without jeopardy, make payments on a contract or subcontract up to 90 per cent of the price of the services or materials that have been supplied under that contract or subcontract unless, prior to making payment, the payer has received **written notice of a lien**.
>
> (2) **Where a payer has received written notice of a lien and has retained, in addition to the holdbacks required by this Part**, an amount sufficient to satisfy the lien, the payer may, without jeopardy, make payment on a contract or subcontract up to 90 per cent of the price of the services or materials that have been supplied under that contract or subcontract, less the amount retained.

In our view, it is important that these sections be amended so that they do not, on their face, conflict with the requirement for annual holdback release. We have suggested amendments to these sections at Appendix "A".

An additional issue arises with respect to notice holdback and annual release of basic holdback.

A lien claimant will typically provide written notice of all amounts owing, including basic holdback, which can result in the double-retention of holdback in the ordinary course. As the OBA noted in its submission to Duncan Glaholt in August, 2024:

> Indeed, the OBA would urge that section 24 of the *Act* be amended such that written notice of lien should specify what portion, if any, of the written notice of lien is on account of basic holdback, and only those amounts claimed in excess of the basic holdback ought to be retained "in addition to the holdbacks required." Otherwise, claims for holdback from subcontractors rapidly deplete the non-holdback funds available for payment in accordance with sections 24 and 6.2.

With respect specifically to the annual release of holdback, section 24 requires retention of "an amount sufficient to satisfy the lien" in addition to basic holdback. As "the lien" will include basic holdback, then even where release of basic holdback is authorized under section 26, the notice holdback provisions could result in the ongoing retention of the basic holdback amount, contrary to the intention of annual holdback release and to the prejudice of those awaiting payment.

Accordingly, we have proposed amendments in Appendix "A" which:

1. Clarify that the amount to be retained as notice holdback is only that additional amount over and above the holdback already retained;
2. Require a person giving written notice of lien to identify the holdback amounts included in the amounts claimed; and
3. Clarify that annual release of basic holdback may take place without jeopardy notwithstanding the receipt of a written notice of lien.

Issue 3 – contractor's obligation to pay "all of the accrued holdback" after receiving "a holdback"

The *Building Ontario For You Act (Budget Measures), 2024* provided for the following at section 26(5) of the *Act*:

> **Payment by contractor**
>
> (5) Not later than 14 days after receiving payment of **a holdback** under subsection (4), the contractor shall make payment to a subcontractor of **all of the accrued holdback** in respect of the services or materials supplied by the subcontractor during the year described in that subsection, unless a lien has been preserved or perfected in respect of the subcontract and the circumstances set out in clause (4) (a) or (b) apply in respect of the lien.

In its discussions with Duncan Glaholt and representatives of the Ministry of the Attorney General on September 9, 2025, the OBA raised the concern that the *Act* appears to create unclear and potentially prejudicial obligations on a contractor in respect of the payment of holdback. The *Act* requires a contractor to pay "all of the accrued holdback" if it receives "a holdback" from the owner. The *Act* did not explain what "a holdback" means, and this language could create inconsistent payment obligations and put the contractor in the position of having to pay more holdback than it receives.

Bill 60 has sought to address these concerns by making the following proposed change at section 26(5) (emphasis added):

> **Payment by contractor**
>
> (5) Not later than 14 days after receiving payment of **the holdback as required** under subsection (4), the contractor shall make payment to a subcontractor of all of the accrued holdback in respect of the services or materials supplied by the subcontractor during the year described in that subsection, unless a lien has been preserved or perfected in respect of the subcontract and the circumstances set out in clause (4) (a) or (b) apply in respect of the lien.

In the OBA's respectful view, there are still two problems with the language.

First, different words are still being used to describe the holdback received ("the holdback as required") and the holdback that needs to be released ("all of the accrued" holdback). This will give rise to unnecessary uncertainty and argument before the courts. In particular, the presumption of consistent expression, a principle of statutory interpretation, presumes that the same words have the same meaning within a statute and different words have different meanings (see *R. v. A.A., 2015 ONCA 558* at para. 68).

Second, while the *Act* requires the owner to pay "all of the accrued holdback", it provides no clear mechanism for relief to the contractor if the owner fails to comply. The OBA understood from its discussion with Duncan Glaholt and Ministry staff that the holdback release provisions were not intended to require contractors to pay holdback that they have not received from an owner. In our view, further revisions to the draft language are required to give effect to this intention.

We suggest that the holdback release scheme should mirror the prompt payment provisions, which were carefully crafted to ensure fairness and transparency. We have suggested draft language in Appendix "A". This language is adapted from and closely mirrors the prompt payment provisions of the *Act*.

Issue 4 – how to determine the amount of accrued holdback

In the OBA's view it is important to make clear how the accrued holdback is to be calculated. In Duncan Glaholt's Final Report dated October 30, 2024, at page 18 (numbered item 1), he made clear that his view is that the accrued holdback is to be calculated based on the relevant proper invoices, subject to any adjudications. We consider this approach to be reasonable and consistent with the prompt payment provisions of the *Act*. In our view, this mechanism for calculating holdback should be clarified in the language of the *Act*, in order to avoid uncertainty and disputes. We have suggested draft language in Appendix "A".

Issue 5 - pending adjudications

We think it is important to make provision for what an owner should do if an adjudication determination is pending in respect of a proper invoice for which holdback is to be released. We have suggested draft language in Appendix "A".

Note that if accepted, this change will mean that the notice of annual holdback release Form will need to provide space for an owner to identify any disputed holdback amount and a pending adjudication.

Prompt Payment on P3s Not Addressed in Draft Amendments to *Act*

In its letter to Attorney General Downey dated January 22, 2025, the OBA noted its concern regarding an important ongoing gap in prompt payment on P3 projects:

> Mr. Glaholt's report declined to recommend changes to those provisions of the *Act* in respect of which Project Co is deemed to be the owner on P3 projects. The result is that it is the provincial Crown which will be required to release holdback on P3 projects – but the provincial Crown typically has little holdback to release. …

The draft regulations released on August 26, 2025, did not address this gap. The OBA was therefore grateful to have an opportunity to discuss this issue in detail on its September 9, 2025 call with Mr. Glaholt and Ministry staff.

As discussed on that call, most of the construction cost on a P3 project is funded by Project Co through its lenders; but because Project Co has no interest in the land and makes no request for the work, it is not an "owner" within the meaning of the *Act*; therefore, invoices delivered to Project Co from the construction contractor are not "proper invoices." Prompt payment is triggered exclusively by the delivery of a "proper invoice" to an "owner." Accordingly, it is critical for the operation of prompt payment on a P3 project that Project Co is deemed to be owner under section 1.1(5) of the *Act* for the purpose of the prompt payment and adjudication provisions.

By the same token, the new annual holdback release requirements will be ineffective on P3 projects because they require holdback release from the "owner" – but absent a change to deem Project Co to be an owner, those requirements will apply to the provincial Crown, which will have little or no holdback in its hands to release.

The OBA notes that *Bill 60* does not include any provision to address this issue. We wish to emphasize the importance of addressing this gap, either by statutory amendment or by regulation. Otherwise, prompt payment – including the requirements for annual holdback release – will simply not operate on P3 projects.

While it is possible that the Ministry is planning to address this gap in its final regulations, we have taken the liberty of suggesting potential amendments at Appendix "A" to section 1.1(5) of the *Act* to address this important gap in prompt payment.

Removal of "Defaults" in Section 30 of the *Act*

It is acknowledged that under the *Act* holdback will remain subject to trust obligations, and lien rights will not expire until after a contractor or subcontractor default gives rise to abandonment or termination of a contractor or subcontract; however, the removal of all references to "defaults" in Section 30 of the *Act* (as currently proposed by Section 5 of Schedule 2 of *Bill 60*) gives rise to potential misinterpretation, in particular that holdback may be applied in the event of a contractor or subcontractor default prior to lien expiry. Accordingly, the OBA recommends restoring reference to "defaults" in Section 30 to maintain clarity and certainty that the application of holdback as described in Section 30 will remain prohibited in the event of contractor or subcontractor default unless all liens that may be claimed against the holdback have expired. This is also consistent with the Ontario government's intentions for Section 30 as described in its summary of *Bill 60*.

The OBA also wishes to note that its comments above presume that the Legislature wishes to preserve the right of a payer to use the holdback to satisfy claims following lien expiry,

and there is some confusion in this regard which may require clarification. The OBA understood from its discussions with Duncan Glaholt that the intention of the reforms to annual holdback release was that set-off should not be permitted against holdback amounts. If this understanding is correct, consideration should be given to a broader revision of section 30 to clarify the circumstances in which holdback may be used to satisfy claims. We have suggested changes at Appendix "A" which reflect this understanding of Mr. Glaholt's intentions in respect of basic holdback.

If on the other hand the intention is to permit set-off against holdback after termination or abandonment, then the requirement for a notice of non-payment of holdback under section 27.1 in those circumstances should be revived so that subcontractors have an opportunity to preserve liens.

Municipal-Related Acts

General Comment

Respectfully, there is concern that *Bill 60*, specifically Schedules concerning municipal powers, reflects a legislative trend toward the centralization of authority within Cabinet or Ministers at the expense of municipal autonomy. In short, the Bill enacts broad province-wide powers to address targeted municipal issues, often with reduced safeguards and oversight. While such measures are understandably intended to expedite development, they risk threatening local authority. Furthermore, it is possible that these changes will not expedite development, as if the Minister is made the ultimate decision-maker for many matters that are or were under a municipality's aegis, the sheer volume of work will naturally delay these decisions.

Schedule 3 – *Development Charges Act*

Section 10 of the *Development Charges Act, 1997* currently requires councils to complete a development charge background study before passing a development charge by-law. **New Subsection 10 (5)** requires the council to give a copy of the background study to the

Minister upon request, by the deadline specified in the request. **New Subsection 13 (5)** of this *Act* requires the council of a municipality to give a copy of a development charge by-law passed by the municipality to the Minister on request, by the deadline specified in the request. This risks undermining municipalities' control over their own development charges processes including the implementation of development charge by-laws specific to each municipality by mandating that the Ministry receive the background study, and development charges by-laws upon request.

Schedule 5 – *Highway Traffic Act*

Schedule 5 adds **Section 5.5(1)** to the *Highway Traffic Act* ("*HTA*"), enabling the Minister to require evidence from an applicant for a licence, permit or certificate respecting the person's residency in Ontario, legal status in Canada and ability to work with respect to certain classes of driver's licences or vehicles.

It would be prudent for the Minister to consider the potential implications associated with the use of proposed Section 5.5(1) as an instrument of immigration enforcement.

For instance, under current law, an individual must provide proof of identity (legal name and date of birth) and proof of residency in Ontario to apply for a license. Acceptable proof of identification can be a passport (Canadian or foreign), a Permanent Resident document, or temporary immigration documents. Accordingly, an immigration document is currently only necessary if the document is being relied upon as proof of identification.

The proposed change creates a statutory requirement wherein applicants would have to prove they are legally present in Canada. The change risks increasing instances of driving without a valid license. This is particularly problematic from an insurance perspective, as under the OAP 1, drivers must hold a valid license to be insured. Consequently, the effects of this change could extend far beyond the unlicensed driver. For instance, it could have serious implications for passengers, other drivers, or pedestrians involved in an accident, and even the rightful owners of vehicles taken without consent or with implicit consent.

Each of these groups could face significant consequences (i.e., end up being deprived of post-accident insurance benefits), ultimately prejudicing Ontarians at large.

Moreover, the proposed change risks applicants avoiding police or government institutions, and may create barriers to accessing employment, education and healthcare if public transit is not available/accessible. A delayed work permit could impact the acquisition of types of licenses that require proof of work eligibility. Lastly, the use of the term "may require" raises concerns about inconsistent enforcement. This discretionary language creates a risk that individuals from certain ethnic applicant groups could be unfairly subjected to requests for proof of immigration status. Accordingly, if implemented, it would be important for police services to have adequate mechanisms in place to mitigate these risks.

Schedule 5 also introduces **PART XII.1** to the *HTA*. This provision would prohibit municipalities from reducing the number of marked lanes available for motor vehicle travel on a highway for the purpose of installing a bicycle lane, or any other "prescribed purpose." There are concerns regarding the scope and application of this amendment. The phrase "prescribed purpose" is undefined, leaving uncertainty as to whether it could include projects such as widening sidewalks, constructing bus lanes, or designating carpool lanes. It is equally unclear why this amendment must apply to all roads, rather than just regional or major roads.

Moreover, local needs and circumstances vary widely across Ontario. Consequently, municipalities are best positioned to determine how to allocate roadway space among motorists, cyclists, and pedestrians. Planning decisions that are effective in densely populated areas such as Toronto may not be appropriate in more rural or remote areas and should thus remain with those best positioned to tailor them to their community's needs.

In addition to these practical issues, there are concerns about how the amendment would interact with existing jurisprudence including, *Cycle Toronto et al. v. Attorney General of*

Ontario et al., 2025 ONSC 4397. Although under appeal, the decision provides useful guidance regarding the application of similar statutory language. At paragraph 218, the Court stated:

> In *R. v Appulonappa*, 2015 SCC 59, at paras. 83-85, the Supreme Court read down a repealed section of the *Immigration and Refugee Protection Act, S.C. 2001, c. 27*, in a manner that provided guidance for the application of that section in other cases. Although not specifically stated, the Supreme Court's decision provided guidance going forward. Similarly, here, the reasons for finding the earlier version of s. 195.6 of the *HTA* unconstitutional provide guidance for the application of the virtually identical section now in effect. **This reasoning results in the conclusion that any steps taken to "reconfigure" the target bike lanes that removes their protected character for the purpose of installing a lane for motor vehicles in order to reduce congestion, would be in breach of s. 7 of the *Charter* and not be saved by s. 1** [***Emphasized***]. [1]

The reasoning above demonstrates the potential for the proposed amendment to risk infringing constitutional protections and to face legal challenges. For instance, the proposed provision would limit expansion of the cycling network, which could lead to further safety issues for riders, especially for expanding neighbourhoods that will have increased transportation needs, including cycling, and other modes of transport (including bus lanes, which potentially may be included under "prescribed purposes" in the future). Notably, it is possible that the proposed s. 195.3(2) would address the potential breach of section 7 *Charter* rights; however, such assessment would need to be examined further by the courts.

Schedule 10 – *Planning Act*

New subsection 3 (5.1) of the *Planning Act* provides that a decision of the Minister, "other than a part of a decision that applies to land in the Greenbelt Area, is not required to be consistent with policy statements issued under that section." This amendment removes essential accountability safeguards that ensure provincial decisions align with established land use planning principles and thus creates potential uncertainty where nearby lands are

[1] *Cycle Toronto et al. v. Attorney General of Ontario et al.,* 2025 ONSC 4397 at para 218.

subject to differing policy regimes. In particular, the Provincial Policy Statement provides consistent policy principles to be applied across municipalities in Ontario. In practice, this could result in inconsistent planning outcomes across municipal boundaries and undermine the predictability that both developers and municipalities rely upon.

New subsections 34 (1.3.1) to (1.3.3) of the *Planning Act* provide rules with respect to reducing minimum standards and increasing maximum standards that are found in by-laws passed under Section 34. While likely intended to promote flexibility and reduce procedural delays, this approach risks inadvertently encouraging municipalities to adjust their baseline standards to offset the provincial formula (i.e., if a 30% reduction in minimum lot size is allotted, the municipality could increase the original minimum by a corresponding amount to maintain the same outcome). The likelihood of this "gaming effect" risks undermining the intended policy objective of this amendment and hinders responsible planning.

Lastly, new **Subsections 47 (1.0.0.1) and (1.0.0.2**) would exempt MZOs from the procedural safeguards in Part III (Regulations) of the *Legislation Act, 2006*. These changes significantly broaden the ministerial discretion while weakening opportunities for public notice, appeal, or review. The absence of such oversight and public participation risks eroding transparency and procedural fairness.

Schedule 11 – *Public Transportation and Highway Improvement Act*
Schedule 11 adds section 96 to the *Public Transportation and Highway Improvement Act* stating that various things under the *Act* do not constitute, and have never constituted, an expropriation or injurious affection for the purposes of the *Expropriations Act* or otherwise at law.

There is concern that this substantial departure from long-standing property rights could prevent landowners from seeking compensation in scenarios where government

infrastructure and/or decisions cause significant impacts on their property rights, such as loss of access, increased setbacks, or devaluation of property.

Moreover, **Section 117** authorizes the Minister to establish standards for the "planning, design, construction, maintenance, management and operation of highways and bridges and related structures and works." While province-wide road standards are desirable in theory, the provision effectively transfers local service-level decisions, within municipal authority, to the province. This risks undermining municipal autonomy in budgeting and infrastructure planning, as well as imposing uniform standards that may not reflect local conditions or financial capabilities.

Schedule 16 – *Water and Wastewater Public Corporations Act*

The proposed *Water and Wastewater Public Corporations Act, 2025* (the "*Act*") would authorize the Minister of Municipal Affairs and Housing to designate, by regulation, a corporation that is incorporated under the *Ontario Business Corporations Act* ("*OBCA*") as a water and wastewater public corporation to provide water and sewage services on behalf of particular lower-tier municipalities.

In its current form, the *Act* permits the Minster to designate only *existing OBCA* corporations to provide services on behalf of certain lower-tier municipalities. Notably, the *Act* does not appear to authorize the *creation* of a new corporation. It is thus unclear how this legislation would apply in scenarios where no *OBCA* corporation exists. For instance, scenarios where water and wastewater services are provided through municipal departments or non-profit entities, or where the service provider is governed federally (which could be *Not for Profit Corporations Act, 2010* municipal services corporations).

In effect, where no *OBCA* corporation exists, and the *Act* does not permit the establishment of one, a legislative gap arises that could undermine the *Act's* intended application. This gap could present legislative and practical challenges, particularly in jurisdictions, such as Peel

Region, where water and wastewater services are delivered by a municipal department rather than through a corporate entity.

Similarly, there appears to be no requirement to deliver such infrastructure based on the growth plans set by the municipality through approved land use planning policies (e.g., Official Plans). Consequently, if the new water and wastewater public corporation installs services to un-serviced land, it is unclear whether the municipality would face pressure to authorize development in that area, even where such development is not contemplated in the Official Plan or related planning documents.

Section 1 of the *Act* defines "water and sewage services" in an overly broad manner with respect to the provision of "water" (e.g., swimming pools, public drinking fountains, etc.). It is unclear whether the intent was instead to refer to "potable water." Accordingly, the Minister ought to clarify this definition in light of the suspected drafting oversight.

Section 9 introduces the issuance of shares and dividends, signaling potential private investment or partial privatization. Due to the significant policy shift associated with possible private equity participation in this sphere, reference to comparable international models (such as the UK) could assist the Ministry in anticipating and managing associated risks.

Section 11 of the *Act* requires municipalities on request, to provide the Minister with records created by the municipality, even if the record includes privileged or confidential information. There is concern that this provision conflicts with solicitor-client privilege, a substantive right with constitutional implications. This right ensures that clients are not to be compelled to reveal communications with, and work done by, their lawyer. Importantly, this is considered "a fundamental civil and legal right" in Canada.[2] The large breadth of Section 11 risks breaching such right by requiring municipalities to disclose privileged

[2] *Solosky v. Canada (1980),* 105 D.L.R. (3d) 745, at 760 (Supreme Court of Canada)

information, which could include legal advice, thereby risking the erosion of privilege protections which are fundamental to democratic governance and municipal autonomy.

There are additional governance concerns arising from **Sections 16-18 and 21** of the *Act*. The former introduces broad immunity provisions that could potentially protect the province and municipalities from labour, employment, or civil claims related to transfers, significantly limiting available remedies. Moreover, under **Section 18**, there is no personal liability for a director or officer of these new corporations. This raises questions about how personal liability for failing to meet the standard of care under Section 19 of the *Safe Drinking Water Act* 2002 would be addressed.

Section 21 grants Cabinet expansive authority to define terms and enact regulations that could alter the substance of the *Act*. These provisions and those set out in Sections 16-18 reduce legislative oversight and raise accountability and transparency concerns.

Residential Tenancies Act

Compensation Requirements for Landlord's Own Use Evictions

Currently, in order for a landlord to utilize an N12 notice of eviction, they must, in good faith, require possession of the rental unit so that the landlord, a specified family member, or a caregiver can move into the unit for a period of at least one year. The landlord must provide the tenant with at least 60 days' notice of the eviction; the termination date must be the day a period of the tenancy ends, or where the tenancy is for a fixed term, the end of the term; and the landlord must provide compensation to the tenant equal to one month's rent or offer the tenant another rental unit acceptable to them.

Bill 60 proposes adding an additional provision for an N12. If the landlord provides the tenant with at least 120 days' notice of eviction, the landlord would not have to meet the standard compensation requirements (i.e. providing the tenant with one month's rent or offering them another acceptable rental unit). We are generally supportive of this proposed

amendment being an additional option for N12s and not replacing the existing 60-day notice rules. There is an associated need to ensure sufficient enforcement and penalties to protect against a landlord misusing N12s in bad faith as a way to increase rent.

Giving Regulatory Authority to Prescribe What Constitutes "Persistent Late Payment"

Section 58 of the *Residential Tenancies Act* ("***RTA***") permits a landlord to give the tenant a notice of termination on a number of grounds, one being that the tenant has persistently failed to pay rent on the date it becomes due and payable. This is separate from the section 59 non-payment grounds for eviction. What constitutes late payment was not explicitly outlined, and decisions have been inconsistent.

Bill 60 proposes to give regulatory authority to outline what constitutes persistent late payment for the purpose of this section. We support the proposal to provide clarity and certainty and think this would be especially important for self-represented litigants. Determining where to draw the line will be challenging and should be done through consultation and with regard to the case law. For small landlords that rely on rent payments for their mortgage, persistent late payments could mean they can no longer maintain the property. For tenants, they may fall into hard times for no fault of their own, whether it is a temporary job loss, medical issue, or other hardship. Striking the right balance will be critical to ensure that tenants are not pushed into an irredeemable position for a situation that could be temporary and rectified to the benefit of both parties.

Shortening the Rent Arrears Eviction Notice Period

Under the *RTA*, when a tenant does not pay rent on time, the landlord can issue a notice of eviction that day after the rent is due. For fixed term or monthly tenancies, the termination date must be at least 14 days after the date the notice is given to the tenant. If the tenant fails to pay the rent before the termination date, the landlord can file an application on the day after the termination date. If the tenant pays the rent arrears before the hearing, the

LTB typically either dismisses the application, or provides a conditional order allowing automatic eviction if future payments are missed.

Bill 60 proposes to shorten the length of notice from 14 days to 7 days. We think that this notice period is too short and will result in more unnecessary applications to the LTB. Holidays and weekends would count towards this period, with the only exception being if the final day lands on a holiday or weekend. In cases where the notice is not given to the tenant personally, the reduction in the length of notice could result in more cases of the tenant not having an opportunity to rectify the arrears. For example, if a tenant is out of the country, or visiting family during holidays, it is foreseeable that the reduced notice period would be an issue. We recommend maintaining the 14-day notice period. Better alternatives to the proposal could be only allowing the 7-day period for personal service to guarantee that it comes to the tenant's attention, while requiring 14 days' notice in other cases. We also suggest excluding holidays and weekends from the calculation of time. Without these changes, we anticipate the result would be more unnecessary applications to the LTB in cases where a tenant may be willing to rectify the issue.

Rules Related to Tenants Raising New Issues at an LTB Rent Arrears Hearing

Under the *RTA*, when a tenant does not pay their rent on time, the landlord can issue a notice of eviction, and if the tenant fails to pay the rent arrears by the termination date, the landlord can file an application with the LTB. The landlord can seek an eviction or alternatively, file an application to collect rent a tenant owes without seeking an eviction. When the landlord files one of these applications, the *RTA* allows the tenant to raise certain issues as part of a counterclaim, subject to certain conditions. The tenant is permitted to raise any issues that could have been the subject of a Tenant's Application, which includes things like disruption to vital services, maintenance and repair problems, illegal charges or deposits, and more. In order to raise these issues, the tenant must give advance notice to the landlord in writing. If they don't comply with those conditions, the tenant must provide a satisfactory explanation to the LTB explaining why they could not comply.

Bill 60 proposes to remove a tenant's ability to raise issues which could have been the subject of a Tenant's Application at a rent arrears hearing unless: (1) the tenant has given advance notice in accordance with the LTB Rules; and (2) the tenant has paid to the landlord, or if provided in the regulations, to the LTB in trust, 50% of the arrears the landlord has claimed are owing in the LTB application.

We recommend not proceeding with this proposal for several reasons. It removes flexibility in cases where a tenant could not comply with the advanced notice conditions. This provision is an exception that requires the tenant to provide an explanation satisfactory to the LTB explaining why they could not comply with the notice requirements. This provision does not give the tenant an unlimited right to negate their obligations – it requires an explanation that satisfies the LTB, which serves an important gatekeeping function to avoid abuse. By removing this exception, tenants will be forced to bring a separate application to hear their issues, which will require additional tribunal resources and reduce efficiency. It is important to recognize that many parties are unrepresented, and that the tribunal needs this type of flexibility to effectively serve the public. We understand the purpose of removing this provision is to avoid trial by ambush. In our view, the current provision, which requires an explanation satisfactory to the tribunal, strikes the right balance of flexibility and justification.

The proposal to require the tenant to pay 50% of the arrears claimed by the landlord is a further concern. As currently drafted, this would be required to be paid to the landlord, with regulatory authority provided to require it be paid to the LTB in trust. The policy objective appears to be an attempt to avoid spurious or frivolous claims, but the proposed indirect way of achieving that objective will reduce access to justice and potentially bar legitimate claims. Basing the amount on the figure the landlord claims, without any tribunal oversight, is problematic. The tenant may have a legitimate argument for set-off and not be able to post half of the amount claimed. That should not bar real issues from being raised. It

is also inadvisable to have this amount paid to the landlord amid a dispute, which could trigger further issues.

We recommend maintaining these provisions as they currently stand. If the government moves forward with these changes, the amount payable should be reduced to avoid blocking legitimate grievances, the default should require payment to the tribunal in trust unless the tenant opts to pay to the landlord, and the provision that permits the tenant to provide an explanation satisfactory to the tribunal explaining why they could not comply with the advance notice requirements should be maintained.

Shortening the Period of Time Available to Request a Review of an LTB Order

Under the *RTA* and LTB Rules, the LTB has the discretion to review a final order where the order contains a serious error, or a party was not reasonably able to participate in the proceeding. LTB Rule 26 says that a party's request to review an order or amended order must be made within 30 days of the order being issued.

Bill 60 proposes to reduce the time period available for requesting a review from 30 days to 15 days. Requests for an extension of time by the LTB would continue to be available for extenuating circumstances. We do not support the proposed reduction. While many parties at the LTB are self-represented, it is more common to engage a lawyer or paralegal at the review stage. Fifteen days does not provide adequate time to engage legal counsel, have them review the file, and draft reasons for a review. The shortened timeframe would be more difficult for self-represented litigants. The tribunal is meant to be flexible and deliver justice, particularly in LTB matters where a person's residence is potentially on the line. This change would likely increase the number of requests for extensions due to missed deadlines, using more tribunal resources and having the opposite effect as intended.

Appendix "A"

1.1 (5) The special purpose entity is deemed to be the owner of the premises in place of the Crown, municipality or broader public sector organization, and the agreement between the special purpose entity and the contractor is deemed to be the contract, for the purposes of the following portions and provisions of this Act and any regulations made for the purposes of them and, for the purpose, the portions, provisions and regulations apply with such modifications as may be prescribed and any other necessary modifications:

1. Subsections 2 (1) and (2).
2. Part I.1.
3. Part II.1.
4. Part IV.
5. Section 31.
6. Section 32.
7. Section 33.
8. Section 39.
9. Any other portion or provision that may be prescribed.

22 (1) Subject to section 26, each payer upon a contract or subcontract under which a lien may arise shall retain a holdback equal to 10 per cent of the price of the services or materials as they are actually supplied under the contract or subcontract until all liens that may be claimed against the holdback have expired or been satisfied, discharged or otherwise provided for under this Act.

24 (1) A payer may, without jeopardy, make payments on a contract or subcontract up to 90 per cent of the price of the services or materials that have been supplied under that contract or subcontract unless, prior to making payment, the payer has received written notice of a lien.

(2) Where a payer has received written notice of a lien and has retained, in addition to the holdbacks required by this Part, an amount sufficient to satisfy that part of the lien which is not made up of the holdbacks required by this Part, the payer may, without jeopardy, make payment on a contract or subcontract up to 90 per cent of the price of the services or materials that have been supplied under that contract or subcontract, less the amount retained.

(3) A written notice of lien shall particularize the amounts of the holdbacks required by this Part which are included in the total amount claimed.

(4) For greater certainty, notwithstanding the receipt of a written notice of lien, a payer may, without jeopardy, make payment of accrued holdback under subsection 22 (1) in accordance with section 26.

26 (1) A payer who is required by subsection 22 (1) to retain a holdback shall make payment of the holdback in accordance with this section.

Mandatory annual payment

(2) Following each anniversary of the date on which the contract was entered into, the owner shall,

(a) give notice in accordance with subsection (3); and

(b) make payment of accrued holdback under subsection 22 (1) in accordance with subsection (4).

Notice

(3) Not later than 14 days after the anniversary, the owner shall publish a notice of annual release of holdback in the prescribed form specifying the amount of holdback that the owner intends to pay under subsection (4) and the intended payment date.

Payment by owner

(4) At least 60 days but not later than 74 days after the date on which the notice of annual release of holdback is published, the owner shall make payment to the contractor of all of the accrued holdback required to be retained under subsection 22(1) in respect of services or materials supplied by the contractor during the year immediately preceding the anniversary, unless a lien has been preserved or perfected in respect of the contract, and,

(a) if the lien attaches to the premises,

(i) the lien has not been discharged under clause 41 (1) (a), and

(ii) an order declaring that the lien has expired, discharging the lien or vacating the registration of the claim for lien or the certificate of action has not been registered under section 49; or

(b) if the lien does not attach to the premises,

(i) the lien has not been satisfied,

(ii) the lien has not been discharged under clause 41 (1) (b), and

(iii) an order declaring that the lien has expired or vacating the lien has not been made.

Determination of accrued holdback amount[3]

(6) For greater certainty, the accrued holdback described in subsection 26(4) shall be determined on the basis of the proper invoices given in accordance with the *Act* during the year described in that section, subject to any adjudication under Part II.1 in respect of such proper invoices.

Holdback on amounts under adjudication

(7) In the event that,

(a) a dispute between the owner and the contractor that has been referred to adjudication affects the calculation of the accrued holdback, and

(b) as of the date that the notice of annual release of holdback is submitted for publication the adjudicator has not yet made his or her determination in that same adjudication,

the owner shall, in the notice of annual release of holdback:

(a) identify the undisputed amount of holdback that is to be paid; and

(b) identify the existence of the pending adjudication and disputed holdback amount.

If the adjudicator's determination requires the payment of disputed amounts by the owner to the contractor, the owner shall pay to the contractor the holdback in respect of such amounts not later than the later of:

(a) 10 days after the determination has been communicated to the parties to the adjudication, and[4]

(b) the expiry of the period referred to in subsection (4),

unless a lien has been preserved or perfected in respect of the subcontract and the circumstances set out in clause (4) (a) or (b) apply in respect of the lien.

Payment by contractor

~~(5)~~ (8) A contractor who receives full payment of all accrued holdback required to be retained under subsection 22(1) within the time specified in subsection 26(4) shall, not later than 14 days after receiving payment, ~~of the holdback as required under subsection (4), the contractor shall make payment to a~~ pay each subcontractor all of the accrued holdback required to be retained under subsection 22(1) in respect of the services or materials supplied by the subcontractor during the year described in that subsection, unless a lien has been preserved or perfected in respect of the subcontract and the circumstances set out in clause (4) (a) or (b) apply in respect of the lien.

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[3] This is consistent with the intention expressed in Duncan Glaholt's Final Report dated October 30, 2024 at page 18 (numbered item 1).
[4] This is consistent with subsection 13.19(2) of the *Act*.

Partial payment, paid amount[5]

(9) If the payment received by the contractor from the owner is only for a portion of the amount payable under subsection (4), the contractor shall, no later than 14 days after receiving payment, pay each subcontractor who supplied services or materials during the year described in that subsection on a rateable basis.[6]

Non or partial payment, unpaid amount[7]

(10) Subject to the giving of a notice of non-payment under subsection (11), if the owner does not pay some or all the amount payable under subsection (4) or (7), the contractor shall, not later than 14 days after the time specified in subsection (4) or (7), as the case may be, pay each subcontractor all of the accrued holdback required to be retained under subsection 22(1) in respect of the services or materials supplied by the subcontractor during the year described in subsection (4), to the extent that he or she was not paid fully under subsection (9).

Exception, notice of non-payment if owner does not pay[8]

(11) Subsection (10) does not apply in respect of a subcontractor if, no later than the date specified in subsection (12), the contractor gives to the subcontractor, in the prescribed manner, a notice of non-payment, in the prescribed form,

(a) stating that some or all of the amount payable to the subcontractor is not being paid within the time specified in subsection (10) due to non-payment by the owner,
(b) specifying the amount not being paid, and
(c) in the case of an owner
    1. who does not pay some or all the amount payable under subsection (4), providing an undertaking to refer the matter to adjudication under Part II.1 no later than 21 days after giving the notice to the subcontractor; or
    2. who does not pay some or all the amount payable under subsection (7), providing an undertaking to enforce the determination under section 13.20.

Timing of Notice[9]

(12) For the purposes of subsection (11), the contractor must give notice before the expiry of the period referred to in subsection (10).

Payment by subcontractor

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[5] This subsection mirrors the language of subsection 6.5(2).
[6] The rateable payment approach is consistent with clause 6.5(3)2, on the basis that there can be no notice of non-payment from the owner in respect of annual holdback release so the option of select payment to given subcontractors as in clause 6.5(3)1 is not necessary.
[7] This subsection mirrors the language of subsection 6.5(4).
[8] This subsection mirrors the language of subsection 6.5(5).
[9] This subsection mirrors the language of subsection 6.5(7).

~~(6)~~ (13) ~~Subsection (5) applies,~~ Subsections (8) to (12) apply, with necessary modifications, with respect to a holdback retained by a subcontractor in respect of a subcontract with another subcontractor, except that clause (11)(c) does not apply if the failure to pay is as a result of non-payment by the owner.[10]

Payment once circumstances cease to apply

~~(7)~~ (14) A payer shall make payment of a holdback that was not payable under subsection (4), ~~(5) or (6)~~ (7), (8) or (13)[11] not later than 14 days after the circumstances preventing payment cease to apply.

Payment of holdback not otherwise paid

~~(8)~~ (15) A payer shall make payment of all holdback that is not paid or payable under subsections (4) to ~~(7)~~ (14) after all liens that may be claimed against the holdback required to be retained under subsection 22 (1) have expired or been satisfied, discharged or otherwise provided for under this Act, in accordance with the following rules:

1. The owner shall make payment of the holdback to the contractor not later than 14 days after the liens have expired or been satisfied, discharged or otherwise provided for under this Act.

2. The contractor shall make payment of a holdback to a subcontractor not later than 14 days after receiving payment of a holdback from the owner.

3. A subcontractor shall make payment of a holdback to a subcontractor not later than 14 days after receiving payment of a holdback from the contractor or from another subcontractor, as the case may be.

Effect on holdback requirement

~~(9)~~ (16) A payment made in accordance with this section reduces the amount required to be retained by the payer under subsection 22 (1) to the extent of the amount paid.

30 ~~If a contract or subcontract is abandoned or terminated, a~~ The holdback required to be retained under subsection 22 (1) shall not be applied by any payer toward obtaining services or materials in substitution for those that were to have been supplied under the contract or subcontract, nor in payment or satisfaction of any claim against the contractor or subcontractor~~, until all liens that may~~

[10] This is designed to require a subcontractor to adjudicate if its payer receives holdback but does not pay it, but avoids duplicate adjudications in respect of an owner's failure to release holdback (as that failure will already be subject to adjudication by the contractor).
[11] These are the subsections which refer, directly or by reference, to holdback not being payable by reason of a lien having been preserved or perfected.

~~be claimed against that holdback have expired or been satisfied, discharged or otherwise provided for under this Act~~. No other holdback shall be so applied until all liens that may be claimed against that holdback have expired or been satisfied, discharged or otherwise provided for under this Act.

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The OBA would be pleased to discuss this further and answer any questions that you may have.