

# Goodmans<sup>LLP</sup> Update

---

## Ontario's Environmental Commissioner Calls for Strong Replacement Climate Law

On September 25, 2018, Dr. Dianne Saxe, the Environmental Commissioner of Ontario (the “**Commissioner**”) released the 2018 Greenhouse Gas Progress Report, *Climate Action in Ontario: What's Next?* (the “**Progress Report**”) to the Ontario Legislature. In the Progress Report, the Commissioner recommends that Ontario implement a strong new climate law to replace the *Climate Change Mitigation and Low-carbon Economy Act, 2016* (the “**Cap and Trade Program**”) that is to be repealed by Bill 4, *Cap and Trade Cancellation Act, 2018* (the “**Proposed Act**”).<sup>1</sup>

The Progress Report recognizes that the Cap and Trade Program was a catalyst for meaningful greenhouse gas (GHG) emissions reductions and was on track to produce many economic and environmental benefits. It also notes that Ontario's climate leadership was enhancing Ontario's reputation and attracting foreign investment to Ontario's clean technology sector; a sector that in 2017 included 5,000 companies with 130,000 employees, generating about \$19.8 billion in revenue each year.

### Key Recommendations

The Commissioner recommends the implementation of a climate action program with sustained and credible long-term commitments to achieve statutory emission reductions that:

1. employs a “polluter-pay” principle as a financial incentive to reduce pollution;
2. unlocks funds for investment in low-carbon solutions; and
3. regulates climate pollution and enforces regulations.

The Commissioner calls on the provincial government to create a climate change law that would drive down emissions while funding sensible solutions through science-based emissions budgets, a legal obligation to stay within those budgets, and credible, transparent progress reporting.

### Unwinding Ontario's Cap and Trade, *Green Energy Act* and Related Programs

On July 25, 2018, the Minister of the Environment, Conservation and Parks introduced the Proposed Act, which, if passed, will repeal the Cap and Trade Program and retire or cancel the various emissions allowances and offset credits currently held by Ontario participants under the Cap and Trade Program. On July 13, 2018, the Government of Ontario announced that it would cancel or wind-down 758 renewable energy contracts. These contracts have compensation clauses providing for the recovery of at least a portion of the developmental costs.

On August 2, 2018, the Attorney General announced the Government of Ontario will challenge, before the Ontario Court of Appeal, the constitutionality of the federal government's carbon tax, which will begin to apply in Ontario on January 1, 2019.

On September 20, 2018, the Government of Ontario introduced legislation to repeal the *Green Energy Act* (GEA), introduced in 2009 to support the development of, among other things, renewable energy in the Province.

Further, on September 26, 2018, the Government of Ontario revoked regulatory amendments made by the previous government to Ontario's net metering framework that were to come into effect on October 1, 2018, under the *Ontario Energy Board Act*, and which would have expanded the scope of the net metering program by enabling third party ownership of net-metered facilities.

The Government of Ontario had also previously terminated other programs, including the GreenOn home energy efficiency rebate program and the Electric and Hydrogen Vehicle Incentive Program, which were being funded by the Cap and Trade Program.

On September 11, 2018, Ecojustice, in conjunction with the uOttawa-Ecojustice Environmental Law Clinic, filed a lawsuit on behalf of Greenpeace Canada alleging the Government of Ontario failed to consult the public on the Proposed Act and on a regulation that ended the Cap and Trade Program. The group, which cited Ontario's *Environmental Bill of Rights* as requiring a 30-day public consultation period on environmentally significant legislation and regulations, is seeking to have the regulation quashed. The case is expected to be heard before the Proposed Act passes. That same day, the Government of Ontario posted a notice of the Proposed Act on the [Environmental Registry of Ontario](#) where the public is invited to comment on this and other actions taken by the Government of Ontario that could affect the environment.

## What this Means for Industry and Other Ontarians

The cancellation of the Cap and Trade Program is expected to remove billions of dollars from the funding for climate change solutions in Ontario. These funding reductions could have a negative impact on local and foreign investment in cleantech solutions and new emissions reduction technologies in Ontario, unless replaced by alternative funding, regulatory requirements and/or other initiatives supporting the implementation of cleantech solutions.

## Next Steps

The provincial government is accepting comments regarding [the Proposed Act](#) until October 11, 2018, and regarding [the repeal of the GEA](#) until October 21, 2018. Those who are interested in the implications of these developments for the Province are encouraged to provide their comments through the [Environmental Registry](#).

For further information on the cancellation of Ontario's Cap and Trade Program, the Proposed Act and other recent government announcements or risk assessment and mitigation for affected business, please contact any member of our [Cleantech Practice Group](#).

## Goodmans Cleantech Practice Group

Goodmans Cleantech Group consists of lawyers who understand the connection between business, technology and energy innovation. Our cleantech practice focuses on entrepreneurs, operating companies, and investors who are looking for value-added legal advice regarding clean technology transactions.

Successful cleantech ventures often bring together different industry and professional sectors. We collaborate in interdisciplinary teams to provide more cost-efficient and extraordinarily effective counsel. Our internal team assists clients with private equity financing transactions and to secure their valuable intellectual property rights. We guide clients through M&A transactions and other financing transactions. We also assist clients with joint ventures and financings of clean technology manufacturing facilities and renewable energy power generation projects.

Goodmans is a leader in working with investors and entrepreneurs who are developing new materials and technologies, partnering with them to bring their ideas to market. We are committed to addressing our clients' needs at every stage: from the earliest discovery or concept; through development, funding, partnerships, and large-scale utility operations; to public offerings and other capital events.

---

<sup>1</sup> See our previous Updates on the cancellation of Ontario's cap and trade program: [Going, Going, Gone – Ontario Premier-Designate Announces Cancellation of Cap and Trade; Pulls Ontario Out of August GHG Auction and Ontario Introduces Bill to Cancel Cap and Trade and Launches Carbon Tax Case](#).

## Authors



Richard Corley  
rcorley@goodmans.ca  
416.597.4197



Kate Lyons  
clyons@goodmans.ca  
416.597.4183



Sophie Langlois  
slanglois@goodmans.ca  
416.849.6925



Niki Kermani  
nkermani@goodmans.ca  
416.849.6005

All Updates are available at [www.goodmans.ca](http://www.goodmans.ca). This Update is intended to provide general comment only and should not be relied upon as legal advice. © Goodmans LLP, 2018.