



DATES TO NOTE

- April 16: HBA Leadership Summit
- April 20: OHBA's Presidents' and Executive Officers' Day and Industry Leaders' Dinner
- May 11: OHBA Awards of Distinction Website Opens (Closes June 24, 2015)
- May 14: OHBA Conference Registration Opens (Conference: Sept. 27-29, 2015)

APRIL 2015

SMART GROWTH FOR OUR COMMUNITIES ACT, BILL 73

In early March, the Minister of Municipal Affairs and Housing, the Honourable Ted McMeekin, [announced new legislation](#) in response to the co-ordinated public consultations on Ontario's Land-Use Planning and Appeals System as well as the Development Charges Act, Parkland Dedication policies and Section 37 (density bonusing policies). The proposed legislation marks the next step in a long consultation process that began in 2013. OHBA formed two committees to consult with our local associations and membership during the consultation process and submitted two comprehensive reports responding to the [Land-Use Planning](#) and to the [Development Charges](#) consultations in early 2014.



This provincial announcement and proposed legislation supports the findings of the co-ordinated public and stakeholder consultations as well as the [2014 Liberal Party election campaign](#) commitment to, "ensure new residential development projects provide more revenue for transit". An [OHBA media release](#) notes that a new transit Development Charges formula will increase the tax burden on new development. There are a number of OHBA supported improvements to enhance municipal accountability and transparency in both the Planning Act and Development Charges Act. OHBA also produced a detailed synopsis of the proposed legislation in a [Builder Advocate](#) sent to members on March 10th.

OHBA has scheduled a Land Development Committee meeting in conjunction with the BILD Land Council on Monday May 4th at 2:00 p.m. in Toronto at the OHBA office. This meeting will include a technical briefing from the Ministry of Municipal Affairs and Housing on both the proposed amendments to the Planning Act and the Development Charges Act. The meeting will also feature industry perspective commentary and what the proposed amendments will mean for OHBA members from lawyers David Bronskill (Goodmans LLP) and Lyn Townsend (WeirFoulds LLP). Please RSVP to OHBA Director of Policy, Mike Collins-Williams mikecw@ohba.ca.

MODERNIZING ONTARIO'S SKILLED TRADES SYSTEM: DAWSON REPORT

On March 30th Dawson Strategic released [a media release](#) outlining a new report written for a number of prominent Ontario Construction Associations highlights the need for a modernized skilled trades and apprenticeship system. Ontario's construction industry is at a crossroads. There are tremendous opportunities in the skilled trades across Ontario. However, the current system isn't allowing Ontario to maximize outcomes and provide apprenticeship opportunities.



The Ontario College of Trades, a recently created regulatory body, has been given the mandate to protect the public interest. [The report examines](#) how the College has performed to-date and finds that it can do better. The report charts a positive path forward that will allow all stakeholders to have more confidence in the future direction of training in the province by providing more apprenticeship opportunities and lowering barriers into the skilled trades. Bottom line: We need forward-thinking solutions to transform Ontario into the leading jurisdiction in North America supporting skilled workforce. This will build the next generation of energy efficient homes and quality public transit infrastructure.

In addition to the report being released, Tony Dean will begin touring locations outside of Toronto as part of his review of the Ontario College of Trades (OCOT). OHBA is encouraging all local associations to use these dates to have a separate discussion on "Modernizing Ontario's Trades" before meeting with Tony Dean. Meeting dates are as follows:

April 9: Kingston, Queen's University	April 10: Ottawa, University of Ottawa	April 14: Hamilton, Mohawk College
April 15: London, Fanshawe College	April 16: Sarnia, Lambton College	April 21: Thunder Bay, Lakehead University
April 23: Sudbury, Cambrian College	April 29: Toronto, Ryerson University	

In addition, OHBA will also be writing a response that addresses specific questions in the Dean Review Consultation Guide that are consistent with past positions.

CONSULTATION ON BUILDER BULLETIN 20

As part of [Taron's consultation process on Builder Bulletin 20 \(BB20\)](#), Taron incorporated feedback from the public consultation that concluded in September 2014 and shared a revised draft of BB20 with the OHBA-Taron Liaison Committee. In response, OHBA has submitted a letter to Taron on March 27th identifying items that require further attention. OHBA continues to work with its members on Builder Bulletin 20 to recommend items that provide clarity on language and process, and maintain objectivity and consistency in assessing chargeability.

ONTARIO GOVERNMENT CLIMATE CHANGE CONSULTATION

In February the Ministry of Environment and Climate Change released a climate change discussion paper on the [Environmental Registry](#). The Ministry also conducted public town halls and stakeholder sessions across the province. OHBA has been engaged directly with the Ministry and has also consulted with members and local associations and [submitted comments and recommendations](#) to the Ministry of the Environment and Climate Change last week.

Highlights of OHBA's key recommendations include:

- Promote culture of conservation by enacting Section 3 of the Green Energy and Green Economy Act, 2009 to enable mandatory home energy audits prior to the sale of an existing home (re-sale);
- Ensure municipal planning implementation policies (including Official Plans and Zoning By-Laws) are modernized and in conformity with the PPS and Provincial Plans;
- The Minister of Transportation commence consultations with stakeholders to implement Section 31.1 of the *Metrolinx Act, 2006* for the Minister to issue a Transportation Planning Policy Statement (TPPS) that would apply to higher-order transit corridors across Ontario;
- Support Planning Act amendments proposed in the *Smart Growth for Our Communities Act, Bill 73* as a good first step to modernize parkland dedication policies from the current value of 1 hectare per 300 dwelling units to 1 hectare per 500 dwelling units. The proposed legislative amendments are supportive of intensification and transit-oriented development;
- A provincial program modelled on the now expired federal ecoENERGY Retrofit – Homes Program to provide grants to help homeowners undertake targeted renovations to upgrade and make their homes more energy-efficient;
- A targeted Home Renovation Tax Credit, modeled on the Healthy Homes Renovation Tax Credit (HHRTC), but specifically targeting energy-efficient upgrades to Ontario's existing housing stock. An additional public policy benefit would be that such a tax credit would assist to combat the underground economy by encouraging consumers to use legitimate contractors and create a paper trail to deter underground activity.

OHBA will continue to keep members updated as more information on the next stage of consultation becomes available.

MINISTRY OF ENVIRONMENT AND CLIMATE CHANGE TECHNICAL PAPER ON SHORT-TERM WATER TAKINGS

Over the past few years OHBA and a number of other construction associations including the Ontario Sewer & Watermain Contractors Association (OSWCA) and the Ontario Road Builders' Association (ORBA) have been engaged with the Ministry of the Environment and Climate Change advocating for a modernization of Permits To Take Water (PTTWs) including clarifications on when permits are and are not required as well as advocating for exemptions for certain low-risk activities. The Ministry has listened to the concerns raised by the construction industry and presented a number of positive proposals at a joint OHBA/BILD MOECC workshop last November and has now posted a [Technical Paper](#) proposing a number of regulatory changes with respect to PTTWs to the Environmental Registry (012-0580) for a 45-day public commenting period.

Submissions to the government are due by April 20th. OHBA plans to make a submission to the Ministry and is currently seeking feedback/input from OHBA members to support our submission in response to the public consultation. Please send your comments to OHBA Director of Policy Mike Collins-Williams: mikecw@ohba.ca. The focus of this technical discussion paper is on short-term, non-recurring water taking activities. The Ministry is seeking comments on the following:

- A. Proposal to clarify that certain activities are not considered water takings by the Ministry, specifically:
 - Diversion of a watercourse for the purpose of creating and maintaining a construction site located wholly or partially within the watercourse where the water is returned back to the watercourse.
- B. Proposal to provide exception from Permit to Take Water (PTTW) requirements with conditions for the following:
 - Pumping of water for the purpose of creating and maintaining a construction site located wholly or partially within the watercourse and where the water that has been pumped is returned back to the same watercourse, if prescribed requirements for discharge are met;
 - A taking of water by means of a structure or works constructed for the diversion or storage of water from a surface source of supply, if the structure or works are designed solely for the restoration, managing, conserving or enhancement of wetlands; and
 - A taking of water by means of an existing structure or works built across a watercourse for the diversion or storage of water from a surface source of supply if the structure or works is intended solely to allow all natural watercourse flow to pass freely over the crest of the structure. (i.e. weir). The proposed exemption would not include any structures that are utilized in hydro-electric projects (i.e. waterpower projects).
- C. Proposal to regulate the following water takings to be prescribed activities for the purposes of the EASR:
 - Surface water takings that are restricted to specific purposes for the taking and the location, or rate of the water taking; and
 - Short-term construction dewatering less than 400,000 L/day
 - Following the posting of the technical discussion paper, if a decision by the MOECC is made to proceed, the next step for this project will be the development of draft regulations – which are also posted for 45 days before the Ministry seeks Cabinet approval on final regulations and implementation.

OHBA is seeking your input (both positive or negative comments) to support our submission to the Ministry and we intend to coordinate our comments with other construction associations.

UPDATED SOFTWARE FOR THE NEW CSA F280-12 CODE COMPLIANCE

[Updated software](#) is now available for calculating heating and cooling equipment capacities to be in compliance with the January 1, 2015 Ontario Building Code requirement for the CSA F280-12 Standard, "Determining the required capacity of residential space heating and cooling appliances". OHBA continues to work with the OBOA and the LMCBO in a joint SB-12 Working Group to ease the implementation and enforcement concerns related to Building Code amendments.

BILL 52, PROTECTION OF PUBLIC PARTICIPATION ACT

On December 1st, Attorney General Madeleine Meilleur tabled **anti-SLAPP (Strategic Lawsuits Against Public Participation) legislation**. This is the second time this legislation has been proposed as the previous version died on the order paper when the election was called last spring. The proposed legislation amends the Courts of Justice Act to create a process for getting a proceeding against a person dismissed if it is shown that the proceeding arises from an expression made by a person that relates to a matter of public interest.

Unlike when the Legislation was previously introduced last year, this Attorney General went out of her way to state, “But make no mistake: protecting freedom of expression and debate does not give anyone the right to unfairly attack an opponent in a public forum. Reputation is one of the most valuable assets a person or business can possess. That’s why we’ve worked hard to develop a proposal that balances the interest of both plaintiffs and defendants.” During debate on December 10, 2014 at Queen’s Park, the Attorney General also stated, “**It does not create a so-called “license to slander.”** Instead, the bill aims to protect expression of matters of public interest. What the bill would do is let a court review lawsuits brought against such expression at an early stage. It would then be up to the court to decide whether the expression at issue is likely to cause serious harm. If so, the court may allow the lawsuit to continue in the normal course of litigation.”

OHBA, could not agree with her more, this piece of anti-SLAPP legislation cannot be a license to slander. Since the Legislation was originally introduced in the previous session of the legislative assembly, OHBA consistently communicated this message to both the Premier’s Office and the Attorney General’s office.

The proposed legislation is currently making its way through second reading debate in the legislative assembly and it is clear that our industry along with a number of others are a target based on comments from all three parties – Progressive Conservatives, Liberals and NDP – whom all appear to support the proposed legislation. OHBA is therefore seeking credible recommendations from members for how we should approach the proposed legislation in committees and potential recommendations to improve the bill.

A couple quotes from MPPs:

MPP Jagmeet Singh (NDP): It’s, again, a hallmark of our society that people need to be able to participate in discourse, particularly on matters that impact their communities, so it should go without saying that people should be encouraged, not discouraged, from participating in issues that affect where they live and how they live. This law will address that.

While this law is supported by all parties, and I’m looking forward to its passage, I want to make sure that we do some work around informing the public of their rights so they know they have this protection. I look forward to a society where we encourage more public participation.

Many people in our caucus have examples of folks who have been SLAPPED, who have been silenced because of their public participation, and that’s not what we want to see. We’re very committed to the principle that people need to be able to participate in this democracy; that’s without doubt.

MPP Toby Barrett (PC): I heard a fair bit about the issue of SLAPP lawsuits probably seven years ago. I was environment critic. We were debating the Lake Simcoe Protection Act. Public hearings were held, and a number of people were at the witness table representing an Innisfil ratepayers’ group. He was about to speak, and then he looked around furtively. Then he explained to us on the committee that he was subject to a \$1-million lawsuit. He felt maybe he was somewhat protected to be able to stand up at committee and talk about the confrontations—you mentioned confrontations—that they were having, as a ratepayer cottagers’ group, with developers. This was up at Big Bay Point.... I can empathize with his concern, his fear. I’ve been involved in confrontation on Caledonia, and I have been named in a lawsuit.

MPP John Vanthof (NDP): I can remember when I first got involved with community groups, with farm organizations, and I can remember my first ugly lawyer letter. Basically, unless I complied with this letter, the sky was going to fall in.

MPP Lorenzo Berardinetti (Lib): We have to fix the system. We have to make sure that people who want to protest against a certain kind of law—if they want to participate in public participation, when someone wants to build something or a developer wants to put something up, they want to be able to speak out, and they don’t want to be stopped by a lawyer’s letter, or a lawyer writing something and saying, “Dear Mr. Protester: You’re going to be sued.”

Hon. Yasir Naqvi (Lib): I had the great opportunity of working with community associations like the Hintonburg Community Association in my riding and people like Albert Galpin, somebody who was SLAPPED and had a strategic lawsuit brought to him because he stood on an issue of public interest.

MPP Peggy Sattler (NDP): In London, we see developments and we see people who are concerned about the impact on the environment. This legislation is desperately needed to enable those people to voice their concerns.

MPP Randy Pettapiece (PC): We stand by the rights of individuals to express their opinions, especially on matters of public interest. The reality is that while SLAPPs, as they are known, are relatively rare, when they do appear or occur, as we’ve heard, they can ruin people’s lives. We do not think it is appropriate for residents to fear having a voice in the growth of their communities.

MPP Robert Bailey (Lib): This bill, Bill 52, if it’s enacted, will allow defendants in these kinds of situations to move a motion that would allow them the chance to prove to a judge that the legal proceedings being brought against them were unfair and were really targeted to just make them shut up and be silent. We want to see that legislation improved.

MPP Bill Walker (PC): The bottom line, at the end of the day, is that we need to protect people’s right to speak up on matters that impact them. Really, if we go right back to those brave individuals who died in the wars for us, it’s that freedom of expression, freedom of speech that we all have the liberty to enjoy because of their heroic deeds and actions. It’s something that I think we all have to stand in this House every day and remember, that we have that privilege, we have that right to speak freely.

MPP Bill Walker (PC): The reality is that while SLAPPs, as they are known, are relatively rare, when they do occur they can in fact ruin people’s lives. We can’t accept that, Mr. Speaker. We do not think it is appropriate for residents to fear having a voice in the growth of their communities.

MPP Indira Naidoo-Harris (Lib): I can tell you that many people in my riding of Halton have spoken out loudly and clearly about this bill. I have spoken to people who say they have been unfairly sued, people who say that they are suffering from emotional and mental stress because of these lawsuits.

MPP Peter Z. Milczyn (Lib): I know in my own community there was a resident who fought a developer over a development application because he felt the development was going on crown land. The person opposing the developer proved that the development cannot go ahead because it's on crown land, on the waterfront, yet they faced tens of thousands of dollars in legal fees from a SLAPP suit. So they won, but they lost.

Hon. Mitzie Hunter (LIB): Our court system is one of the central institutions of our fair and democratic society. By protecting citizens against strategic litigation, our government is protecting the right of Ontario residents to speak out on matters that are important and really vital to us. If passed, this legislation would allow courts to quickly identify and deal with strategic lawsuits, minimizing the emotional and financial strain on defendants as well as the waste of our court resources.

The current bill includes a few minor amendments. It clarifies the appeal process respecting decisions (a) to dismiss lawsuits as strategic lawsuits and (b) to stay related administrative proceedings, as well. It also limits the amount of time spent on cross-examinations to seven hours per side, rather than one day per party. It also applies the legislation only to those lawsuits begun after the reintroduction of the bill, so as not to interfere with ongoing litigation; that provides necessary clarity to the courts, as well, as cases are ongoing. It also changes the effective date of the bill to the date of royal assent, instead of proclamation. Once again, urgency and time are important to really move these matters forward.

The ministry is aware that in certain sectors, like the forestry industry and, obviously, certain municipalities, there might be concern that the bill would allow undue or unfair criticism of very legitimate operations—forestry operations, business and economic operations. The legislation really aims to balance the interests of the defendants as well as the plaintiffs in defamation suits—the protection of public participation and the freedom of expression versus the protection of reputation and economic interests. It's really taking into account the input and the feedback from all sides; and I think the good work of the panel, as my colleague said, as well as those stakeholders, has really helped to shape this bill.



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