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ARTICLE

Bill 108 to Restrict the Power of Conservation Authorities

On May 2, 2019, the Government of Ontario introduced Bill 108, the *More Homes, More Choice Act, 2019*. Bill 108 amends several environmental statutes, including the *Conservation Authorities Act* (the Act).

The proposed legislative changes aim to more clearly define the core responsibilities of conservation authorities, and to provide increased transparency and accountability with respect to funding of programs by municipalities. Although the Act was last amended by the *Building Better Communities and Conserving Watersheds Act, 2017*, not all of the amendments made in 2017 have been proclaimed. Bill 108 proposes to proclaim some of those outstanding provisions, including those related to fees for service, recovery of costs from municipalities, and regulation and enforcement powers.

In addition to the legislative amendments, the Ministry of Natural Resources and Forestry has also proposed a new regulation to outline the permitting and regulatory powers of conservation authorities with respect to development in hazard lands (e.g., floodplains) and with respect to interference with a watercourse or a wetland. While the details of the new regulation have not been released, the proposal is available [on the Environmental Registry](#) and open for comment until May 21, 2019.

Duties and Functions of Conservation Authorities

Conservation authorities have historically been established for the purpose of providing watershed-based programs and services designed to further the conservation, restoration, development and management of natural resources. They carry out these objectives using a number of tools, from exercising the powers of a source protection authority under the *Clean Water Act, 2006*, providing technical and advisory services with respect to resource management, to land ownership and management for the protection of wetlands, and regulating and permitting development in or adjacent to hazard lands, wetlands, or watercourses. Conservation authorities are frequently called upon as commenting agencies, and may be directly engaged in the planning approval process.

At present, each conservation authority operates pursuant to a regulation, which describes the programs and services the conservation authority is to undertake. Amendments to the Act as proposed in Bill 108 aim to focus the activities of conservation authorities on core programs by listing these core mandates in the Act as mandatory:

- Programs and services related to the risk of natural hazards;
- Programs and services related to the conservation and management of lands owned or controlled by the authority;
- Programs and services related to the authority's duties, functions and responsibilities as a source protection authority under the *Clean Water Act, 2006*; and
- Any other programs and services prescribed by the regulations.

While establishing these programs as mandatory would not significantly alter the overall role of conservation authorities, it is likely to have an impact on the amount of financial and staffing resources conservation authorities are able to devote to other activities.

Conservation authorities will be permitted to provide programs and services outside of the core mandatory mandate. These include programs and services requested to be provided by a municipality and delivered in accordance with a memorandum of understanding entered into between the authority and the municipality. Lastly, a conservation authority may provide any programs and services within its area of jurisdiction to further the authority's objectives, provided the funding requirement described below is met.

Funding Transparency

While the exact funding breakdown of each conservation authority differs, generally the most significant source of funds are levies collected from municipalities in the authority's area of jurisdiction. The conservation authority determines the relative benefit that each municipality receives from a program delivered by the authority, and the municipality remits its share.

The proposed amendments update sections 25 and 27 of the Act, which address the process of allocating the costs for capital and operational expenditures as between the benefiting municipalities. The proposed amendments further stipulate that if a conservation authority wishes to carry out a non-mandatory program which requires municipal funding, the authority must enter into an agreement to secure funding for the program from each participating municipality. This agreement must stipulate the apportionment under sections 25 and 27, as well as a termination date and a requirement that parties review the agreement before renewing it.

The proposed changes further provide for the appointment of investigators to inquire into any or all of the conservation authorities' affairs, and conduct a financial audit of the authority's operations, including its programs and services.

The proposed amendment also adds a requirement for members of conservation authorities to act honestly and in good faith with a view to furthering the objects of the authority.

Anticipated Future Changes

The majority of the amendments to the Act are proposed to enter into force when proclaimed.

The next steps to amending the powers of conservation authorities in Ontario will be the detailed changes proposed to the regulatory regime. The outline of the proposed new regulation indicates a move to harmonize and consolidate the existing individual regulations governing each conservation authority. The amendments will affect the permitting and regulatory powers of conservation authorities by exempting certain low-risk development activities, and allow conservation authorities to further exempt other low-risk development activities from requiring a permit. The new regulation is also proposed to require conservation authorities to notify the public of changes to regulated areas, such as floodplains and wetland boundaries.

How BLG Can Help

Municipalities, public agencies, developers and other stakeholders involved in current or future environmental and land use matters should consider the implications of amendments proposed by the first reading of Bill 108. Our Environmental Law and Municipal and Planning Law groups are well positioned to assist you in understanding the implications of Bill 108 and how it may affect your interests.

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