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Hydro One Inc. Directors and Officers Act, 2002

[S.O. 2002, Chapter 3](http://www.ontario.ca/laws/statute/s02003)

**Consolidation Period:** From June 27, 2002 to the [e-Laws currency date](http://www.e-laws.gov.on.ca/navigation?file=currencyDates&lang=en).

No amendments.

Note: This Act is repealed on a day to be named by proclamation of the Lieutenant Governor. See: 2002, c. 3, s. 24.

Interpretation

Definitions

**1** In this Act,

“designated officer” means a person employed by Hydro One Inc. who holds one of the following offices with Hydro One Inc. on June 4, 2002:

1. President and Chief Executive Officer.

2. Executive Vice President, Planning and Development.

3. Executive Vice President, Wires Operations.

4. Executive Vice President and General Counsel and Secretary.

5. Chief Financial Officer and Senior Vice President, Finance; (“dirigeant désigné”)

“Minister” means the Minister of Environment and Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; (“ministre”)

“subsidiary” has the same meaning as in the *Business Corporations Act*. (“filiale”) 2002, c. 3, s. 1.

Board of Directors

Termination re directors of Hydro One Inc.

**2** (1)  This section applies to every person who holds office on June 3, 2002 as a member of the board of directors of Hydro One Inc. 2002, c. 3, s. 2 (1).

Termination of term of office

(2)  The term of office of each member of the board of directors of Hydro One Inc. is hereby terminated, and the termination shall be deemed to have taken effect on June 4, 2002. 2002, c. 3, s. 2 (2).

Same, subsidiaries

(3)  If a member of the board of directors of Hydro One Inc. is also a member of the board of directors of any subsidiary of Hydro One Inc. on June 3, 2002, his or her term of office as a member of the board of directors of the subsidiary is hereby terminated, and the termination shall be deemed to have taken effect on June 4, 2002. 2002, c. 3, s. 2 (3).

Payments

(4)  A person is not entitled to any payment in respect of the termination of his or her term of office by subsection (2) or (3). 2002, c. 3, s. 2 (4).

Appointments to fill vacancies

**3** (1)  The Minister may make appointments to fill the vacancies created by subsections 2 (2) and (3), and may do so despite the articles and by-laws of the applicable corporation and despite any unanimous shareholders’ agreement. 2002, c. 3, s. 3 (1).

Same

(2)  The persons appointed by the Minister to fill those vacancies shall be deemed to have been appointed on June 4, 2002 to replace the persons whose term of office was terminated by subsections 2 (2) and (3). 2002, c. 3, s. 3 (2).

Term of office

(3)  The persons appointed by the Minister hold office at the pleasure of the Minister, but their term of office expires no later than the end of the first annual meeting of shareholders of Hydro One Inc. or the subsidiary, as the case may be, that occurs after this Act receives Royal Assent. 2002, c. 3, s. 3 (3).

Other appointments to boards of directors

**4** (1)  The Minister may make appointments to the board of directors of Hydro One Inc. or any of its subsidiaries, and may do so despite the articles and by-laws of the applicable corporation and despite any unanimous shareholders’ agreement. 2002, c. 3, s. 4 (1).

Restrictions

(2)  The Minister is not entitled to make appointments that would result in the membership of the board being greater than the number of members authorized by the articles and by-laws of the applicable corporation and by any unanimous shareholders’ agreement. 2002, c. 3, s. 4 (2).

Filling other vacancies

(3)  The Minister may make appointments to fill any vacancy on the board of directors of Hydro One Inc. or any of its subsidiaries, and may do so despite the articles and by-laws of the applicable corporation and despite any unanimous shareholders’ agreement. 2002, c. 3, s. 4 (3).

Term of office

(4)  Subsection 3 (3) applies with respect to persons appointed under this section. 2002, c. 3, s. 4 (4).

Expiry of authority

(5)  The Minister’s authority to make appointments under this section expires at the end of the first annual meeting of shareholders of the applicable corporation that occurs after this Act receives Royal Assent. 2002, c. 3, s. 4 (5).

Additional power re board members

**5** (1)  The Minister may terminate the term of office of any member of a board of directors of a subsidiary of Hydro One Inc., and may do so despite the articles and by-laws of the subsidiary and despite any unanimous shareholders’ agreement. 2002, c. 3, s. 5 (1).

Same

(2)  The Minister may make appointments to fill vacancies created under subsection (1), and may do so despite the articles and by-laws of the applicable subsidiary and despite any unanimous shareholders’ agreement. 2002, c. 3, s. 5 (2).

Term of office

(3)  Subsection 3 (3) applies with respect to persons appointed under this section. 2002, c. 3, s. 5 (3).

Payment

(4)  A person is not entitled to any payment in respect of the termination of his or her term of office under subsection (1). 2002, c. 3, s. 5 (4).

Expiry of authority

(5)  The Minister’s authority to make appointments under this section expires at the end of the first annual meeting of shareholders of the applicable subsidiary that occurs after this Act receives Royal Assent. 2002, c. 3, s. 5 (5).

Indemnification of board members

**6** (1)  Hydro One Inc. shall indemnify the members of its board of directors with respect to the matters described in section 136 of the *Business Corporations Act*. 2002, c. 3, s. 6 (1).

Same, subsidiaries

(2)  Each subsidiary of Hydro One Inc. shall indemnify the board members appointed by the Minister in the same manner and to the same extent as it indemnifies other board members with respect to the matters described in section 136 of the *Business Corporations Act*. 2002, c. 3, s. 6 (2).

Application of *Business Corporations Act*

**7** (1)  Subsection 119 (9) of the *Business Corporations Act* does not apply with respect to persons appointed to a board of directors by the Minister under this Act. 2002, c. 3, s. 7 (1).

Vacancies on the board

(2)  Section 124 of the *Business Corporations Act* does not apply with respect to Hydro One Inc. or a subsidiary of Hydro One Inc., as the case may be, until the end of the first annual meeting of shareholders of Hydro One Inc. or the subsidiary that occurs after this Act receives Royal Assent. 2002, c. 3, s. 7 (2).

Conflict

(3)  This Act prevails over the *Business Corporations Act*. 2002, c. 3, s. 7 (3).

Designated Officers

Negotiations for new employment contracts

**8** (1)  The board of directors of Hydro One Inc. shall negotiate with each of the designated officers for a new employment contract that, in the opinion of the board, provides for a substantial reduction in the officer’s remuneration and benefits. 2002, c. 3, s. 8 (1).

Restrictions replaced

(2)  The restrictions imposed by sections 9 to 12 with respect to a designated officer cease to apply when Hydro One Inc. publishes a notice in *The Ontario Gazette* that it has entered into a new employment contract with the officer. 2002, c. 3, s. 8 (2).

Review of remuneration and benefits

(3)  The board of directors of Hydro One Inc. shall conduct a review of the remuneration and benefits of its officers and shall ensure that the board of directors of each of its subsidiaries conducts a review of the remuneration and benefits of the officers of the subsidiary. 2002, c. 3, s. 8 (3).

Payments upon termination of office

**9** (1)  A designated officer is not entitled on or after January 1, 1999 to any payment in respect of the termination of his or her office as an officer. 2002, c. 3, s. 9 (1).

Same

(2)  A designated officer who is a director of Hydro One Inc. or any of its subsidiaries is not entitled on or after January 1, 1999 to any payment in respect of the termination of his or her term of office as a director. 2002, c. 3, s. 9 (2).

Payments upon termination of employment

**10** (1)  A designated officer is not entitled on or after January 1, 1999 to be paid compensation that exceeds the amount authorized by subsection (2) relating to the termination of his or her employment. 2002, c. 3, s. 10 (1).

Amount

(2)  Until the designated officer enters into a new employment agreement and the notice required by section 8 is published, the amount of compensation is the amount determined in accordance with the employment standards legislation applicable to the officer. 2002, c. 3, s. 10 (2).

Payments upon resignation

**11** A designated officer is not entitled on or after January 1, 1999 to any payment in respect of his or her resignation from office, from the board of directors of Hydro One Inc. or any of its subsidiaries or from employment. 2002, c. 3, s. 11.

Pension and retirement income

**12** (1)  A designated officer is not entitled on or after January 1, 1999 to a pension or retirement income that exceeds the amount described in subsection (2). 2002, c. 3, s. 12 (1).

Amount

(2)  The maximum amount of pension and other retirement income payable to or in respect of a designated officer is the amount of his or her pension, if any, provided by the Hydro One Pension Plan and retirement income, if any, provided by the unregistered supplementary plan,

(a) that provides benefits equal to the difference between the maximum pension benefits allowed under the *Income Tax Act* (Canada) and the benefits determined in accordance with the formula set out in the Hydro One Pension Plan; and

(b) that provides those benefits in respect of all members of the Hydro One Pension Plan whose level of earnings results in such a difference. 2002, c. 3, s. 12 (2).

Repayment of Excess Amounts

Prohibition re excess payments

**13** (1)  No person or entity shall pay an amount in respect of the termination of a person’s term of office by subsection 2 (2) or (3). 2002, c. 3, s. 13 (1).

Same, designated officers

(2)  No person or entity shall pay any amount to or in respect of a designated officer that exceeds the amount, if any, authorized by this Act,

(a) relating to the termination of his or her employment;

(b) in respect of his or her resignation from office, from the board of directors of Hydro One Inc. or any of its subsidiaries or from employment;

(c) as pension or retirement income. 2002, c. 3, s. 13 (2).

Duty to repay

**14** (1)  If a person receives an amount after this Act receives Royal Assent that exceeds the amount, if any, authorized by this Act, the person shall repay the excess amount within six months after receiving it. 2002, c. 3, s. 14 (1).

Duty to repay amounts received before Royal Assent

(2)  If a person received an amount on or after January 1, 1999 and before this Act receives Royal Assent that exceeds the amount, if any, authorized by this Act, the person shall repay the excess amount within six months after this Act receives Royal Assent. 2002, c. 3, s. 14 (2).

Debt owing to the Crown

(3)  If the person does not repay the excess amount within the period specified by subsection (1) or (2), as the case may be, the excess amount shall be deemed to be a debt owing to the Crown. 2002, c. 3, s. 14 (3).

Rights, Claims and Immunity

Rights terminated

**15** (1)  Any contractual or other right of a person to receive compensation or any other payment relating to the termination of his or her term of office as a director of Hydro One Inc. or any of its subsidiaries shall be deemed to have expired on June 4, 2002. 2002, c. 3, s. 15 (1).

Same, designated officers who are directors

(2)  Despite subsection (1), any contractual or other right of a person to receive compensation or any other payment relating to the termination of the term of office of a designated officer as a director of Hydro One Inc. or any of its subsidiaries shall be deemed to have expired on January 1, 1999. 2002, c. 3, s. 15 (2).

Same, designated officers as officers

(3)  Any contractual or other right of a person to receive compensation or any other payment relating to the termination of a designated officer’s office as officer shall be deemed to have expired on January 1, 1999. 2002, c. 3, s. 15 (3).

Same, designated officers as employees

(4)  Any contractual or other right of a person to receive compensation or any other payment relating to the termination of the employment of a designated officer shall be deemed to have expired on January 1, 1999. 2002, c. 3, s. 15 (4).

Same, letter of credit

(5)  Any obligation or requirement under a letter of credit or other financial instrument to make any payment to or on behalf of a director of Hydro One Inc. or any of its subsidiaries whose term of office is terminated under this Act relating to the termination of his or her term of office shall be deemed to have expired on June 4, 2002. 2002, c. 3, s. 15 (5).

Same, designated officers who are directors

(6)  Despite subsection (5), any obligation or requirement under a letter of credit or other financial instrument to make any payment to or on behalf of a designated officer relating to the termination of his or her term of office as a director of Hydro One Inc. or any of its subsidiaries shall be deemed to have expired on January 1, 1999. 2002, c. 3, s. 15 (6).

Same, designated officers as officers

(7)  Any obligation or requirement under a letter of credit or other financial instrument to make any payment to or on behalf of a designated officer relating to the termination of his or her office as officer shall be deemed to have expired on January 1, 1999. 2002, c. 3, s. 15 (7).

Same, designated officers as employees

(8)  Any obligation or requirement under a letter of credit or other financial instrument to make any payment to or on behalf of a designated officer relating to the termination of his or her employment shall be deemed to have expired on January 1, 1999. 2002, c. 3, s. 15 (8).

Same

(9)  Any obligation or requirement under a letter of credit or other financial instrument to make any payment to or on behalf of a designated officer relating to a pension or retirement income, other than pension and retirement income authorized by section 12, shall be deemed to have expired on January 1, 1999. 2002, c. 3, s. 15 (9).

Claims, etc., nullified

(10)  No person has any claim, demand or cause of action for compensation or any other payment relating to the termination of the term of office of a director of Hydro One Inc. or any of its subsidiaries. 2002, c. 3, s. 15 (10).

Same

(11)  No person has any claim, demand or cause of action for compensation or any other payment relating to the termination of employment of a designated officer or the termination of his or her office as an officer. 2002, c. 3, s. 15 (11).

Immunity

**16** (1)  No proceeding shall be commenced against the Crown, Hydro One Inc., a subsidiary of Hydro One Inc. or any other person relating to or resulting from any of the following matters:

1. The termination under this Act of the term of office of a member of the board of directors of Hydro One Inc. or any of its subsidiaries.

2. The appointment of members of the board of directors of Hydro One Inc. or any of its subsidiaries by the Minister under this Act.

3. The restrictions imposed by sections 9 to 12 on compensation and other payments to or in respect of designated officers.

4. The prohibitions imposed by section 13.

5. The creation of the duty to repay an excess amount imposed by subsection 14 (1) or (2) or the deeming by subsection 14 (3) of an excess amount to be a debt owing to the Crown.

6. The termination of rights and obligations and other requirements and the nullification of a claim, demand or cause of action by section 15. 2002, c. 3, s. 16 (1).

Same

(2)  Without limiting the generality of subsection (1), no application may be made for an order under section 248 of the *Business Corporations Act* in connection with any of the matters described in subsection (1). 2002, c. 3, s. 16 (2).

Same

(3)  No damages, amount in lieu of damages or other amount is payable by the Crown, Hydro One Inc., a subsidiary of Hydro One Inc. or any other person for the termination of rights or of obligations and requirements by section 15. 2002, c. 3, s. 16 (3).

Collection of Debts Owing to the Crown

Lien, etc., on property

**17** (1)  Any amount that is a debt owing to the Crown under this Act by any person is, upon registration by the Minister in the proper land registry office of a notice claiming a lien and charge conferred by this section, a lien and charge on any interest the person has in the real property described in the notice. 2002, c. 3, s. 17 (1).

Lien on personal property

(2)  Any amount that is a debt owing to the Crown under this Act by any person is, upon registration by the Minister with the registrar under the *Personal Property Security Act* of a notice claiming a lien and charge under this section, a lien and charge on any interest in personal property in Ontario owned or held at the time of registration or acquired afterwards by the person. 2002, c. 3, s. 17 (2).

Amounts included and priority

(3)  The lien and charge conferred by subsection (1) or (2) is in respect of all amounts owing to the Crown under this Act by the person at the time of registration of the notice or any renewal of it and all amounts that afterwards become debts owing to the Crown under this Act by the person while the notice remains registered and, upon registration of a notice of lien and charge, the lien and charge has priority over,

(a) any perfected security interest registered after the notice is registered;

(b) any security interest perfected by possession after the notice is registered; and

(c) any encumbrance or other claim that is registered against or that otherwise arises and affects the person’s property after the notice is registered. 2002, c. 3, s. 17 (3).

Lien effective

(4)  A notice of lien and charge under subsection (2) is effective from the time assigned to its registration by the registrar or branch registrar and expires on the fifth anniversary of its registration unless a renewal notice of lien and charge is registered under this section before the end of the five-year period, in which case the lien and charge remains in effect for a further five-year period from the date the renewal notice is registered. 2002, c. 3, s. 17 (4).

Same

(5)  Where any amount that is a debt owing to the Crown under this Act remains outstanding and unpaid at the end of the period, or its renewal, referred to in subsection (4), the Minister may register a renewal notice of lien and charge; the lien and charge remains in effect for a five-year period from the date the renewal notice is registered, until the amount is fully paid, and shall be deemed to be continuously registered since the initial notice of lien and charge was registered under subsection (2). 2002, c. 3, s. 17 (5).

Where person not registered owner

(6)  Where a person has an interest in real property but is not shown as its registered owner in the proper land registry office,

(a) the notice to be registered under subsection (1) shall recite the interest of the person in the real property; and

(b) a copy of the notice shall be sent to the registered owner at the owner’s address to which the latest notice of assessment under the *Assessment Act* has been sent. 2002, c. 3, s. 17 (6).

Secured party

(7)  In addition to any other rights and remedies, if any amount owing to the Crown under this Act remains outstanding and unpaid, the Minister has, in respect of a lien and charge under subsection (2),

(a) all the rights, remedies and duties of a secured party under sections 17, 59, 61, 62, 63 and 64, subsections 65 (4), (5), (6) and (7) and section 66 of the *Personal Property Security Act*;

(b) a security interest in the collateral for the purpose of clause 63 (4) (c) of that Act; and

(c) a security interest in the personal property for the purposes of sections 15 and 16 of the *Repair and Storage Liens Act*, if it is an article as defined in that Act. 2002, c. 3, s. 17 (7).

Registration of documents

(8)  A notice of lien and charge under subsection (2) or any renewal of it shall be in the form of a financing statement or a financing change statement as prescribed under the *Personal Property Security Act* and may be tendered for registration at a branch office established under Part IV of that Act, or by mail addressed to an address prescribed under that Act. 2002, c. 3, s. 17 (8).

Errors in documents

(9)  A notice of lien and charge or any renewal thereof is not invalidated nor is its effect impaired by reason only of an error or omission in the notice or in its execution or registration, unless a reasonable person is likely to be materially misled by the error or omission. 2002, c. 3, s. 17 (9).

*Bankruptcy and Insolvency Act* (Canada) unaffected

(10)  Subject to Crown rights provided under section 87 of the *Bankruptcy and Insolvency Act* (Canada), nothing in this section affects or purports to affect the rights and obligations of any person under that Act. 2002, c. 3, s. 17 (10).

Definition

(11)  In this section,

“real property” includes fixtures and any interest of a person as lessee of real property. 2002, c. 3, s. 17 (11).

Recovery of amounts payable

**18** (1)  Upon default of payment by a person of any amount owing to the Crown under this Act,

(a) the Minister may bring an action for the recovery thereof in any court in which a debt or money demand of a similar amount may be collected, and every such action shall be brought and executed in and by the name of the Minister or his or her name of office and may be continued by his or her successor in office as if no change had occurred, and shall be tried without a jury; and

(b) the Minister may issue a warrant, directed to the sheriff for any area in which any property of the person is located or situate, for any amount that is a debt owing to the Crown under this Act by the person, together with interest thereon from the date of the issue of the warrant and the costs, expenses and poundage of the sheriff, and such warrant has the same force and effect as a writ of execution issued out of the Superior Court of Justice. 2002, c. 3, s. 18 (1).

Compliance of Minister to be proved by affidavit

(2)  For the purpose of any proceeding taken under this Act, the facts necessary to establish compliance on the part of the Minister with sections 17 to 21 as well as the failure of any person to comply with the requirements of sections 17 to 21 shall, unless evidence to the contrary satisfactory to the court is adduced, be sufficiently proven in any court of law by affidavit of the Minister or of any officer of the Ministry of the Minister. 2002, c. 3, s. 18 (2).

Security

**19** The Minister may, if he or she considers it advisable, accept security for the payment of a debt owing to the Crown under this Act by way of a mortgage or other charge of any kind upon the property of the person or of any other person, or by way of a guarantee of payment by another person. 2002, c. 3, s. 19.

Costs of enforcement

**20** Where the Minister, in the course of obtaining payment of any amount that is a debt owing to the Crown under this Act, incurs reasonable costs and charges upon,

(a) registration of a notice of lien and charge under section 17;

(b) the bringing of an action for payment under clause 18 (1) (a); and

(c) the issuance and execution of a warrant referred to in clause 18 (1) (b) to the extent not recovered by the sheriff upon execution thereof,

the costs and charges may be recovered from the person who owes the debt. 2002, c. 3, s. 20.

Costs of purchasing property

**21** For the purpose of collecting a debt owing to the Crown under this Act by a person, the Minister may purchase or otherwise acquire any interest in the person’s property that the Minister is given a right to acquire in legal proceedings or under a court order or that is offered for sale or redemption and may dispose of any interest so acquired in such manner as he or she considers reasonable. 2002, c. 3, s. 21.

Other remedies

**22** The use of any of the remedies provided by sections 17 and 18 does not bar or affect any of the other remedies therein provided, and the remedies provided by this Act for the recovery or enforcement of the payment of any debt owing to the Crown under this Act are in addition to any other remedies existing by law, and no action or other proceeding taken in any way prejudices, limits or affects any lien, charge or priority existing under this Act or otherwise. 2002, c. 3, s. 22.

General

Information and reports

**23** (1)  The Minister may request Hydro One Inc., any of its subsidiaries and such other persons and entities the Minister considers appropriate to give him or her such information, including personal information, and reports as he or she considers necessary for the purpose of collecting debts owed to the Crown under this Act. 2002, c. 3, s. 23 (1).

Compliance

(2)  A person or entity who receives a request from the Minister for information or a report shall comply with the request. 2002, c. 3, s. 23 (2).

Authorization

(3)  The Minister may directly or indirectly collect personal information and use it for the purpose of collecting debts owed to the Crown under this Act. 2002, c. 3, s. 23 (3).

Repeal

24 (1)  Subject to subsection (2), this Act is repealed on a day to be named by proclamation of the Lieutenant Governor. 2002, c. 3, s. 24 (1).

(2)  A proclamation may provide for the repeal of different provisions of this Act on different dates. 2002, c. 3, s. 24 (2).

**25** Omitted (provides for coming into force of provisions of this Act). 2002, c. 3, s. 25.

**26** Omitted (enacts short title of this Act). 2002, c. 3, s. 26.

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