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ENERGY REGULATION IN ONTARIO

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(formerly authored by David M. Brown)**

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Publisher's Special Release Note 2021

The pages in this work were reissued in May 2021 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the April 2020 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to heading numbering have occurred. Please refer to the Correlation Table in the front matter if you wish to confirm references.

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What's New in this Update:

- This update of Energy Regulation in Ontario contains updates and revisions to Chapter 1 (A Brief History of Energy Deregulation in Ontario), Chapter 2 (The Ontario Energy Board: Structure, Powers and Jurisdiction), and Chapter 3 (Ontario Energy Board: Practice and Procedures).

Highlights

- **A Brief History of Energy Deregulation in Ontario — Bending the Cost Curve** — The last half of the decade, 2015 to 2020, was a period during which the provincial government and regulatory agencies sought to abate or at least substantially slow new energy infrastructure investment and reduce overall system cost. Government initiatives over the previous decade to retire coal generation, acquire new capacity resources and further decarbonize the electricity system through investments in wind, solar and other renewable resources under the *Green Energy Act* came at a significant cost. Between 2006 and 2016, the Ontario Power Authority (and later the IESO) entered into over 30,000 procurement contracts for over 7,000 MW of capacity, resulting in substantial increases to consumers' electricity bills.
- **The Ontario Energy Board: Structure, Powers and Jurisdiction — Board Powers and Structure** — The Board's organizational and governance structure was significantly revised in 2020 by *Fixing the Hydro Mess Act, 2019* which, among other things, was intended to increase the accountability within the Board. This was achieved by restructuring the Board to achieve a greater separation between the Board's management, administrative and adjudicative functions. As a result of the new structure, the Board is composed of a board of directors, Chief Executive Officer, and commissioners including the office of the Chief Commissioner, all of whom carry out their allocated powers and responsibilities.
- **Ontario Energy Board: Practice and Procedures — Judicial Review of a Board Order; Stated Case** — There is some question as to whether issues related to procedural fairness before the Board should proceed by way of appeal or judicial review. The Divisional Court has indicated that the question is determined by whether or not there is an "Order" from which an appeal can be made, but that it is somewhat academic as the Divisional Court has jurisdiction in either case. The difference, if any, between the two routes could be in the standard of review to be applied, particularly in light of the approach to standard of review enunciated by the

Supreme Court of Canada in the 2019 Administrative Law Trilogy which creates a different standard when a statutory right of appeal is available.

ProView Developments

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- The opening page is now the title page of the book as you would see in the print work.
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- The Table of Cases and Index are now in PDF with no searching and linking.
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- Images are generally greyscale and size is now adjustable.